Workmen's Compensation Act

ONTARIO

by

The Honourable Mr. Justice W. D. Roach
Commissioner

Report on

The Workmen's Compensation Act

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Ontario. Commissioner appointed to report upon the Workmen's Compensation Act

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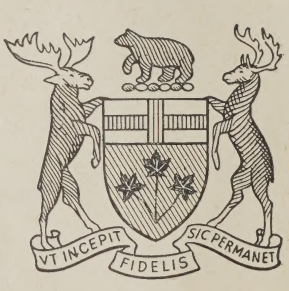

ONTARIO

Report of the Honourable Mr. Justice Roach, Commissioner appointed to inquire into and report upon, and to make recommendations regarding The Workmen's Compensation Act upon subjects other than detail administration. —— May 31, 1950.

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1950

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Appendices

To His Honour

The Lieutenant-Governor of the Province of Ontario

May It Please Your Honour:

Under the authority of *The Public Inquiries Act, Revised Statutes of Ontario, 1937, Chapter 19*, you appointed me your Commissioner to inquire into and report upon and to make recommendations regarding *The Workmen's Compensation Act* upon subjects other than detail administration. That Commission bears date the sixth day of October, 1949, and a copy thereof is hereto attached as Appendix "A".

I have completed that inquiry and this is my report.

Upon receipt of the Commission I caused a public notice to be published in the public press at various places throughout the Province setting forth the fact that this Commission had issued to me and the scope of the inquiry I was thereby directed to make. A copy of that notice and the names of the newspapers in which it was published and the date of those publications is hereto attached as Appendix "B".

As a result of those notices briefs were submitted to me by those whose names appear in Appendix "C" hereto. Those briefs were voluminous and it is impractical to attach them to this report as part thereof.

In addition to those briefs I also received a number of letters written by or on behalf of individuals who had or claimed to have been injured in industry and who had filed claims for compensation under the Act. In some of those letters complaints were made with respect to matters which do not come within the scope of my inquiry, viz. detail administration of the Act. I nevertheless acknowledged those letters and drew attention to the extent of the inquiry which I was authorized to make. In others of those letters complaints were made with respect to matters into which I was authorized to inquire. Without here enumerating them, it will suffice to say that they are included in some of the briefs which were submitted and will be hereinafter dealt with under specific headings. I also acknowledged those letters.

I next caused a written notice to be sent to those persons, firms or organizations from whom briefs, and in some instances letters, had been received advising them that commencing on December 20, 1949, I would hold a series of public hearings at the Parliament Buildings, Toronto, for the discussion and consideration of the various matters dealt with in the briefs and letters and to receive such evidence or further representations as they or others might desire to submit. Press notices to that effect also appeared in various newspapers throughout the Province and radio news broadcasts further publicized it.

Public meetings were held on December 20 and 21 on which dates the briefs were read and tabled. Copies thereof were made available at those meetings for those who desired them.

The public hearings were then adjourned to December 28 to enable all those who so desired to study the briefs which had been tabled so that when the meetings resumed they would be familiar with them and the better able to contribute to the discussions which were to follow.

Public meetings were subsequently held on December 28, 29 and 30, 1949 and on January 3, 4, 5, 6, 9, 10, 11, 12, 13, 23, 24, 25, 26 and 27, 1950.

Mr. Kenneth Morden, K.C. and Mr. Edwin Goodman acted as counsel to the Commission and for the valuable assistance which they gave throughout the whole inquiry I desire to here record my great appreciation.

The Board loaned the Commission the services of Mr. Walter Johnson who most capably performed the duties of Secretary to the Commission and Mr. F. W. Graham who acted in an advisory capacity. They both, of course, attended all the public hearings. To Mr. Graham, in particular, I feel very much indebted. He has been associated with the Board for twenty-five years and Deputy to the commissioners for seven years. He has a most thorough knowledge of the Act and a familiarity with its history and operations which I feel certain is unexcelled by any other person.

The other attendances at the public meetings were as follows:

Canadian Manufacturers Association represented by:

Mr. H. W. Macdonnell
Mr. G. King Shields
Mr. C. H. Kercher
Mr. J. T. Stirrett
Mr. G. C. Bernard
Mr. E. O. Morgan
Mr. A. C. Thompson

Trades and Labor Congress represented by:

Mr. A. F. McArthur
Mr. William Jenoves
Mr. Hugh Sedgwick
Mr. William Godfrey
Mr. Bruce Magnussen
Mr. Bert Green
Mr. John W. Bruce
Mr. D. J. Buchanan
Mr. Robert Gerard
Mr. Harry Simon
Mr. Russell Harvey

Ontario Federation of Labour represented by:

Mr. Cleve Kidd
Mr. Joseph MacKenzie
Mr. C. H. Millard
Mr. Eamon Park
Mr. Max Dodds
Mr. J. L. Whitehouse
Mr. John L. Dowling
Mr. David Archer

Railway Transportation Brotherhood represented by:

Mr. A. J. Kelly
Mr. H. B. Crawford
Mr. A. H. Balch
Mr. J. G. McLean
Mr. N. Sward

International Union of Mine, Mill and Smelter Workers, Local 241 represented by:

Mr. N. Thiebault
Mr. C. Neilson

International Union of Mine, Mill and Smelter Workers, Local 598 represented by:

Mr. William Kennedy

Electrical, Radio and Machine Workers Union represented by:

Miss I. Wilson

International Chemical Workers' Union, Local 161 represented by:

Mr. R. F. Wright
Mr. William Edmiston
Mr. Gordon Thomas

United Automobile Workers of America, Local 439 represented by:

Mr. Moses McKay

United Automobile Workers of America, Local 112 represented by:

Mr. James Logue

United Rubber Workers of America represented by:

Mr. Max Dodds

Granite Workers Union represented by:

Mr. C. Lewis

International Nickel Company of Canada Limited represented by:

Mr. T. D. Delamere, K.C.
Mr. G. S. Jarrett
Mr. Ian Douglas
Mr. Harold Mowat

Ontario Mining Association represented by:

Mr. N. F. Parkinson
Mr. S. W. McIntosh

Ontario Road Builders Association represented by:

Mr. F. B. Eagleson, K.C.

Ontario Forest Industries Association represented by:

Mr. C. R. Miller
Mr. W. N. Corbett

Toronto Building Trades Council represented by:

Mr. Alfred Ward

Toronto Builders Exchange represented by:

Mr. F. S. Milligan

Ontario General Contractors Association represented by:

Mr. C. E. Potter

Canadian Institute of Stove and Furnace Manufacturers represented by:

Mr. D. H. Findlay
Mr. F. B. Weaver

Standard Chemical Company Limited represented by:

Mr. D. A. Hutton
Mr. S. C. Sefton

Construction Safety Association of Ontario represented by:

Mr. H. C. McGough
Mr. R. A. Phinnemore

Ontario Highway Construction Safety Association represented by:

Mr. H. C. McGough

Industrial Accident Prevention Association represented by:

Mr. R. B. Morley

Class 20 Accident Prevention Association represented by:

Mr. D. M. Fraser

Ontario Pulp and Paper Makers Safety Association represented by:

Mr. D. B. Chant

Electrical Employers Association of Ontario represented by:

Mr. W. Maclachlan

Mines Accident Prevention Association represented by:

Mr. N. F. Parkinson

Lumbermen's Safety Association represented by:

Dr. W. S. Barnhart

City of Toronto represented by:

Mr. J. P. Kent, K.C.

Association of Mining Municipalities of Northern Ontario represented by:

Mr. M. T. Maguire
Mr. B. H. Evans

Ontario Firemen's Association represented by:

Mr. J. Preston
Mr. R. Swanborough

The Railways Operating in Ontario represented by Mr. J. P. Pratt, K.C. and also as follows:

Canadian National Railways by Mr. A. D. McDonald, K.C. and Mr. G. L. McConnell
Canadian Pacific Railway by Mr. F. D. Turville and Mr. F. H. Britton
Wabash Railway by Mr. J. D. Pickup
Michigan Central Railway by Mr. Nicol Kingsmill
Algoma Central Railway by Mr. G. S. Saunderson, K.C.

Bell Telephone Company of Canada represented by:

Mr. F. A. Burgess
Mr. A. C. Heighington, K.C.
Mr. D. M. Symons

Dominion Marine Association represented by:

Mr. Frank Wilkinson, K.C.
Mr. George R. Donovan

Labour-Progressive Party represented by:

Mr. A. A. McLeod
Mr. J. B. Salsberg

Investment Dealers Association of Canada represented by:

Mr. D. W. M. Cooper
Mr. R. O. Daly, K.C.

Ontario Medical Association represented by:

Dr. H. S. Dunham

Ontario Medical Association and College of Physicians and Surgeons represented by:

Dr. R. T. Noble

Christian Science Churches of Ontario represented by:

Mr. Donald D. Carrick
Mr. Frederick W. Boorer

Ontario Chiropractors and Drugless Therapists represented by:

Mr. Douglas Hoskins
Dr. R. J. Watkins

Ontario Association of Chiropodists represented by:

Mr. K. V. Stratton, K.C.

Mr. M. J. McLarin represented by:

Mr. K. V. Stratton, K.C.

Mr. Harry P. Collings

Mr. Edward Drouillard

Mr. Andrew Ferguson

The number of those attendances indicates the keen and widespread interest taken in the inquiry. The discussions were provocative and searching. There were, at times, sharp conflicts between the opinions expressed and the submissions made by or on behalf of those representing employers and workmen respectively and also between the views expressed by others with respect to certain features of the Act. I will deal with those opposing views later in this report. Before so doing, it is perhaps desirable that I give a general outline of the Act. I realize that such an outline is not necessary for your immediate purpose. I assume, however, that copies of this report, in due course, will be read by others who may not be equally familiar with it. A general outline of the Act at this point will therefore serve two purposes: first, it will make what I shall later have to say with respect to certain provisions in it the more easily understood, and, second, it will shorten what I would otherwise be required to say concerning them.

SYNOPSIS OF THE ACT

The Act is administered by a Board which consists of three members, called commissioners, who are appointed by and continue to hold office during the pleasure of the Lieutenant-Governor in Council. A commissioner shall cease to hold office when he attains the age of seventy-five years. They devote their whole time to the duties of the Board and their salaries, which are fixed by the Lieutenant-Governor in Council, are payable out of the accident fund, to which reference will be later made.

The Act provides for medical aid and for the payment of compensation to workers who sustain personal injury by accident arising out of and in the course of their employment or who are disabled by an industrial disease from earning full wages at the work at which they were employed.

It also provides for the payment of burial expenses and for specified amounts to dependants of workers where death results from the injury or industrial disease.

The foregoing protection is extended to the workers engaged in the industries or businesses which are enumerated either in Schedule 1 or Schedule 2 of the Act.

In Schedule 1 are the following industries or businesses, viz., manufacturing of all kinds, lumbering, mining, quarrying, stone crushing, stone cutting, milling, packing houses, canning factories, printing, warehousing, teaming, cartage, taxis and buses, building in all its branches, coal and wood yards, operation of theatres and moving picture places, gas works, light, power and paper works systems, construction or repair of roads, streets, sewers, bridges, railways, canals, piers, and wharves; fishing, dredging and stevedoring; automobile and other repair shops; butchering; bakeries; dairies; hospitals; hotels; power laundries; dyeing and cleaning; the business of operating office buildings and restaurants; and others.

In Schedule 2 are the businesses of railways, street railways, express, telegraph and Dominion telephone companies; navigation, towing and marine wrecking; municipalities; commissions and school boards; and the Crown in the right of the Province.

Employers in the businesses enumerated in Schedule 2 are individually liable to pay the medical aid and compensation to the Board in respect of workers injured in their employ and the Board in turn pays it to those entitled thereto.

Employers in the industries or businesses enumerated in Schedule 1 are not individually liable but are required to contribute to what is called the accident fund, and medical aid and compensation in respect of workers injured in their employ is paid by the Board out of that fund.

The industries or businesses in Schedule 1 are divided into classes. Presently there are twenty-five classes.

In each year the Board is required to assess and levy upon the employers in each class such percentage of their pay-roll as the Board deems sufficient to pay

the medical aid and compensation during the current year in respect of injuries to workers in the industries or businesses within that class. A provisional rate, which is determined by the Board's accident experience in that class, is made at the beginning of the year and assessments levied and collected at that rate on the employer's estimated pay-roll and at the end of the year the rate is adjusted and the adjusted rate applied to the actual pay-roll for the year to meet the requirements for that year.

The Board is empowered, where it deems it proper to do so having regard to the hazard to workmen in any of the industries embraced in a class, to subdivide the class into sub-classes and where that is done to fix the percentages or proportions payable to the accident fund by the employers in each sub-class.

The Board is empowered to withdraw or exclude from a class industries in which not more than a stated number of workmen are usually employed. An employer in an industry thus excluded may elect to become a member of the class to which, but for such withdrawal or exclusion, he would have belonged. Likewise, a workman in an industry thus withdrawn or excluded may notify the Board that he desires the industry to be included and thereupon it shall be included regardless of the wishes of the employer.

The Act requires that separate accounts shall be kept of the amounts collected and expended in respect of every class and sub-class but for the purpose of paying compensation the accident fund is to be deemed one and indivisible.

Thus, the scheme of the Act is that as between the workmen and the employers in Schedule 1 generally all those employers are collectively liable but as between the various classes or sub-classes each class or sub-class should bear, as nearly as possible, the burden of the accidents in that class or sub-class.

Every employer, whether in Schedule 1 or Schedule 2, is required within three days after the happening of an accident to a workman in his employ by which the workman is disabled from earning full wages or which necessitates medical aid to notify the Board in writing thereof.

Compensation is payable in respect of injuries by accident with two exceptions, viz.—

1. Where the disability lasts less than seven days. This is referred to as the "waiting period".

2. Where the accident is attributable solely to the serious and wilful misconduct of the workman and does not result in death or serious disablement.

It will suffice at the moment to simply say that the Act prescribes the amount of compensation in both fatal and non-fatal cases. Later in this report I will deal with the question of those amounts.

The benefits provided by the Act are in lieu of all rights of action for damages at law and such actions cannot be prosecuted for matters covered by the Act.

All claims for compensation whether payable by the employer individually or out of the accident fund are heard and determined by the Board and the Board's decision is final. The Board's decisions on all other matters coming within its jurisdiction are also final. No action or decision of the Board is open to question or review in any court.

The Act authorizes the Board to take such measures and make such expenditures as it may deem necessary or expedient in rehabilitating the injured workman and the expense thereof is to be borne in Schedule 1 cases out of the accident fund and in Schedule 2 cases by the employer individually.

The Act also authorizes the employers in any one or more of the classes in Schedule 1 to form themselves into an association for accident prevention and the Board may in any case which it deems proper make a grant towards the expenses of such association. Any moneys paid by the Board to an association shall be charged against the class or classes represented thereby.

Having given the foregoing outline of the Act it may be advantageous to now say something concerning its background.

BACKGROUND OF THE ACT

The Workmen's Compensation Act, 4 George V, Chapter 25, was passed by the Legislature on May 1, 1914 and came into operation on January 1, 1915. It was drafted by the late Chief Justice Meredith after an exhaustive study and investigation of the subject of workmen's compensation. He was acting under the authority of a Commission issued to him and his final report is contained in *Ontario Sessional Papers 1914, Volume XLVI.*

The late Mr. Justice Middleton, acting under the authority of a Commission issued to him similar in scope to mine, conducted an inquiry in 1931-2. His report, dated February 11, 1932, is contained in *Ontario Sessional Papers 1932, Volume LXIV, Part VI.*

During the inquiry which I have conducted submissions have been made which convince me that, notwithstanding that those earlier reports are on record, the circumstances in which the Act was born and the evils which it was designed to overcome should be restated for the benefit of those to whom those earlier reports may not be readily available. Such a recital should result in a clearer comprehension of the purposes of the Act and prevent it being distorted into something that it was never intended to be.

This review must commence with a consideration of certain aspects of the employer-employee relationship under the common law.

Under the common law the liability of the employer to the employee for injuries sustained rested on fault or negligence. If there was no negligence on the part of the employer or those for whose acts or omissions he was responsible, there was no liability. The mere existence of the relationship in itself did not give rise to any liability. That relationship created only a duty, not a liability. The employer's duty was only to take reasonable care that the employee should not suffer injury in the course of his employment. The breach of that duty constituted negligence without which there was no liability.

Therefore, before an employee who was injured at his work could recover damages for his injury, he was required to first prove that his injuries were caused by the negligence of his employer. Even if he succeeded in proving such negligence, he might still fail in the prosecution of his claim because of certain defences which were available to the employer. Those defences were as follows:

The employer might prove:

First: That the employee was also negligent and that his negligence contributed to cause the accident—that is contributory negligence.

Second: That the employee had assumed the risk of injury in undertaking the work—the assumption of the risk rule.

Third: That the negligence of a fellow servant caused the injury—that is the doctrine of common employment.

An injured employee or the representatives of one who had been killed, in an action in the courts, might prove negligence on the part of the employer; he might escape through the barriers of contributory negligence, assumption of the risk and the doctrine of common employment and at a trial obtain a verdict in his favour. His tribulations did not end at that point. There were courts of appeal to which the employer might carry the litigation. Most employers usually were in a financial position to protract the litigation by appealing from the original verdict. If the employee had sufficient resources to finance the original trial those resources were usually exhausted at the end of the trial and when faced with an appeal two alternatives were presented to him, abject surrender or a compromise of the verdict.

In the case of a financially weak employer the employee might experience considerable difficulty in collecting the amount of his verdict, particularly if it was for a substantial sum.

If and when the employee finally collected the amount of his judgment there were lawyers' fees to be paid and these reduced the net amount which the employee ultimately had by way of compensation for his loss.

Over the years various statutes modified the defences available to the employer but the social and economic evils created by what has been called "Industry's Human Wreckage" persisted.

As a complete substitute for the old common law protection for the workman and not as a mere improvement therein came various types of workmen's compensation laws throughout the whole industrial world. Among them was the Ontario Act. It was the vanguard of all such legislation in Canada.

It swept away the old common law doctrines to which I have referred and rested the right to compensation upon the mere existence of the employer-employee relationship.

The benefits to the employers need only be enumerated without any comment. The employers in Schedule 1 are given immunity against individual liability and are provided with a system of mutual insurance which is the cheapest form of insurance. The smaller employers avoid the risk of financial ruin as a result of accidents to their employees. The cost to the employers in both schedules 1 and 2 is made as certain as possible having regard to the vagaries of accidents, and within certain limitations they are enabled to reckon that expense in their costs of operation. It is deceptive, however, to say that the employers as a class bear the whole cost of compensation. A considerable part of that cost is passed on to the consuming public by including it in the sale price of the commodities which the employers produce or the services which they sell.

The employees benefit by having their compensation certain and secure. They may quarrel with the amount but they are not left in doubt as to what it shall be or whether they shall receive it. Also they receive it whether or not the accident was caused wholly or in part by their own negligence. Further, in the case of permanent partial or permanent total disability, as will later appear, they receive it for life even though they may live beyond the age at which, due to the natural infirmities of advanced years, they would, even if uninjured, have to cease their labours. It is not correct to say that they make no contribution because in fact

they do. In cases of less serious injuries resulting in incapacity for less than the waiting period, they forego compensation for that period and in the case of the more serious but non-fatal injuries they receive compensation equal only to a part of their earnings.

The public benefit by the fact that the worker, though disabled, is enabled to retain his self respect. The compensation which he receives is not charity. He has in fact purchased it. If the accident results in death the dependants of the worker do not become public charges. Society as a whole benefits but the public, too, pays a proportion of the cost. Its share is that part of the cost which is passed on to it by the employer and such part as may be contributed out of the Consolidated Revenue Fund of the Province towards the operation of the Act under the provisions in the Act with respect thereto.

This Act should be considered for what it is and was originally intended to be, namely, a scheme by which compensation is provided in respect of injuries to workers in industry. It is not a system for dispensing charity. It is not unemployment insurance. It is not social legislation for the purpose of elevating the standard of one group in society at the expense of another.

I will have occasion to point out later that certain amendments which have been introduced into the Act since it was originally passed are really in the nature of social legislation and a departure from the original scheme and purpose of the Act. The effect of those amendments has been to impose upon industry burdens which should be borne by society generally.

If the true purposes and objectives of the Act are adhered to, justice will be done as between industry and labour. If, on the other hand, those purposes are lost sight of, or this Act from time to time be regarded as a convenient place into which to put legislation which in substance is social and not compensatory, it may become very much distorted. In the result, labour will continue to be relieved from unjust burdens from which it suffered too long under the common law but an injustice will be done to industry by placing on its shoulders burdens which should be borne by society generally.

I now proceed to a consideration of specific provisions in the Act which were the subjects of submission and discussion before me.

INDUSTRIES AND BUSINESSES COVERED BY PART I OF THE ACT

The Act does not apply to the industry of farming or to domestic or menial servants or their employers. An employer engaged in the industry of farming may bring himself within Part 1 of the Act by application under section 88. Up to December 31, 1949, 308 farmers have brought themselves within the Act. Farm employees, however, cannot bring themselves under that Part.

Part 1 of the Act applies only to the industries mentioned in schedules 1 and 2 and to such industries as shall be added to them under the authority of the Act and to employments therein and to employment by or under the Crown in the right of the Province.

As already stated, the industries or businesses mentioned in Schedule 1 are arranged in classes.

The Board has power under section 84 (1) (*b*) to pass regulations, subject to the approval of the Lieutenant-Governor in Council, bringing within the provisions of Part I any industry not already included in it.

Some employers operating an industry included in the class of industries named in Schedule 1 are not covered by Part I. They have been excluded by regulations of the Board passed under the authority of section 86 which reads as follows:

> 86.—(1) The Board may in the exercise of the powers conferred by section 84 withdraw or exclude from a class industries in which not more than a stated number of workmen are usually employed and may afterwards add them to the class or classes from which they have been withdrawn, and any industry so withdrawn or excluded shall not thereafter be deemed to be included in Schedule 1, but no withdrawal or exclusion under the authority of this subsection shall have the effect of excluding any industry from Schedule 2.
>
> (2) Where industries are withdrawn or excluded from a class under the authority of subsection 1, an employer in any of them may, nevertheless, elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged, and if he so elects he shall be a member of that class and as such liable to contribute to the accident fund, and his industry shall be deemed to be embraced in Schedule 1.
>
> (3) Notice of the election shall be given to the Secretary of the Board and the election shall be deemed to have been made when the notice is received by him.
>
> (4) A workman in any industry excluded under the authority of subsection 1 may notify the Secretary of the Board that he desires such industry to be included in Schedule 1, and such notice upon receipt thereof by the Secretary shall have the same effect as a notice of election from the employer.

Those thus excluded by regulation of the Board and the reasons therefor are as follows:

First Group

Where Less than Six Workmen are Usually Employed in any of the following industries that particular industry is withdrawn from the class in Schedule 1 in which it would otherwise be included, namely:

(*a*) The cutting or splitting of firewood;

(*b*) The manufacture of cheese;

(*c*) The manufacture of artificial limbs;

(*d*) Power laundries, dyeing, cleaning or bleaching establishments;

(*e*) Mining (including prospecting and development work) except in producing mines where the workmen are in the employ of the owner, lessee or recorded holder thereof;

(*f*) Operation of threshing-machines, clover-mills and ensilage-cutters;

(*g*) Manufacture of feathers or artificial flowers;

(*j*) Cutting, hewing, piling or hauling logs, wood or bark; logging; bark-peeling by hand;

(*k*) The business of window-cleaning;

(*l*) The business of operating office buildings and buildings rented for manufacturing;

(*m*) The business of operating a restaurant except where such business is carried on in and for another industry covered under Part I, in which case it is deemed part of that other industry.

Second Group

Where Less than Four Workmen are Usually Employed in any of the following industries that particular industry, when not incidental to an industry under Schedule 1, is withdrawn from the class in Schedule 1 in which it would otherwise be included, namely:

(*a*) Repair shops, excepting automobile repair shops and/or automobile repair garages;

(*b*) Carrying on of a blacksmith or blacksmith and woodwork shop;

(*c*) Upholstering;

(*d*) Picture-framing;

(*e*) Manufacture of rubber stamps, pads or stencils;

(*f*) Butchering;

(*g*) Conveyance of passengers by automobile or trolley-coach.

Third Group

Each of the following industries when carried on as part of, in immediate connection with, and for the purpose of an exclusively retail store is excluded from the operation of Part I, namely:

(*a*) Watch, clock and jewellery making and repairing;

(*b*) Boot and shoe making and repairing;

(*c*) Harness-making and repairing;

(*d*) The business of an optician;

(*e*) Tinsmithing;

(*f*) Pipe cutting;

(*g*) Paper cutting;

(*h*) Drug manufacturing;

(*i*) Sausage manufacturing;

(*j*) Meat cutting;

(*k*) Coffee grinding;

and like operations or work.

This third group is excluded only where they are in immediate connection with and for the purpose of an exclusively retail store and the reason for that is that retail stores have never been brought under the Act.

It may be advantageous to here name the industries or businesses which, for greater certainty, the Board by regulation 235 passed in 1944 specified as being excluded from the provisions of Part I. They are as follows:

(*a*) The business of a florist or seedsman, seed-growing, gardening and horticulture; the keeping or breeding of livestock, poultry or bees; fruit-growing; the picking, grading, packing, hauling, handling and storage of fruit or vegetables, carried on by co-operative fruit-growers' associations or companies, whose membership or shareholders are limited to the producers of such fruit or vegetables and whose object is to bring about more satisfactory handling and sale thereof and not to carry on such work or operations as a business for profit or gain;

(*b*) Hand laundries;

(*c*) Barber-shops and shoe-shine establishments;

(*d*) Manufacture of plaster statuary;

(*e*) Funeral-directing and embalming;

(*f*) Mail-carrying;

(*g*) Retail mercantile business, and, unless carried on by means of a store or warehouse, wholesale mercantile business. (As amended by O. Reg. 33/45, effective 1st January, 1946.)

(*h*) Educational work, veterinary work and dentistry;

(*k*) Taxidermy;

(*l*) Junk dealing;

(*m*) The business of an architect;

(*n*) Excavation other than as expressly mentioned or as included in other industries;

(*o*) Every industry carried on as part of, in immediate connection with, and for the purpose of an exclusively retail business dealing in men's or women's clothing, whitewear, shirts, collars, corsets, hats, caps, furs or robes;

(*p*) The business of a photographer;

(*q*) The trimming of women's hats when carried on as part of or incidental to a wholesale millinery business;

(*r*) The pumping or raising and collecting and conveyance of petroleum by a person who does not refine or otherwise treat the same or prepare or manufacture any product therefrom.

The submission was made to me that every workman employee should be covered by Part I of the Act no matter in what industry or business he may be employed and even though he is the sole employee. I dismiss that submission by merely saying that it would be absolutely impractical to attempt to so extend the coverage and such extensive coverage was never intended.

I make three recommendations under this heading.

First:

That members of municipal volunteer fire brigades be covered by the Act.

I have been informed by the Board that since 1922 it has been accepting applications from municipal corporations for coverage of the members of volunteer fire brigades and that presently there are 155 such brigades recognized by the Board as being covered.

I would suppose, judging from the title, that the members of a volunteer fire brigade are men who volunteer their services as fire fighters and apart from perhaps an honorarium or an occasional banquet tendered to them, receive no consideration for their services. They volunteer because they are moved by a sense of civic duty to do so. In my opinion they are not workmen as defined by the Act. Section 1 (1) (*p*) of the Act defines a workman as follows:

> (*p*) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied whether by way of manual labour or otherwise, but when used in Part I shall not include an outworker or an executive officer of a corporation.

I should not think that it could be said that a member of a municipal fire brigade entered into a contract with a municipal corporation.

I am informed by the Ontario Fire Marshal that a municipal volunteer fire brigade is usually organized as follows: the municipal corporation passes a by-law under *The Municipal Act* establishing a municipal fire brigade and naming the chief of the brigade. He in turn solicits stalwart men in the municipality to enroll with him as members of the brigade. I should think that such enrolment would not constitute a contract of hiring.

This recommendation, if adopted, will require:

1. That the definition of "workman" in the Act be extended by inserting after the word "otherwise" in the fifth line thereof the words "and a member of a municipal volunteer fire brigade",

and I so recommend.

2. That there shall be added to section 1 (1) of the Act the following clause:

(*q*) "Member of a municipal volunteer fire brigade" shall mean a person whose membership has been approved either by the chief of the department or by the municipal corporation or a duly authorized official thereof and for the purposes of this Act his average yearly earnings shall be deemed to be the sum of $3,000,

and I so recommend.

3. That section 1 of the Act be amended by adding thereto the following:

(3) For the purposes of this Act a municipal corporation shall be deemed to be the employer of a member of a municipal volunteer fire brigade, and such employment shall be deemed to be included in the exercise and performance of the powers and duties of the corporation,

and I so recommend.

Second:

That the provisions of Part 1 should be made applicable to every person who under section 167 of the Criminal Code is required to assist in arresting any person or in preserving the peace.

Section 167 reads as follows:

167. Everyone is guilty of an indictable offence and liable to six months' imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy-sheriff, mayor or other head officer, justice, magistrate or peace officer, in the execution of his duty in arresting any person or in preserving the peace, without reasonable excuse omits to do so.

Police officers in the discharge of their duties enjoy the protection of the Act and I suggest that it would be fair that persons who, under that section, are required to assist them, should be equally covered.

I suggest that this can best be done by adding an appropriate section at the end of Part I.

Third:

Before stating this recommendation, it may be advantageous to quote section 88. It is as follows:

88.—(1) The Board may, upon the application of an employer, add to Schedule 1, for such time and upon such terms and conditions as the Board may determine, any industry or part of an industry, or department of work or service, of such employer.

(2) The Board may, upon the application of an employer, add to Schedule 2, for such time and upon such terms and conditions as the Board may determine, any industry or part of an industry, or department of work or service, of such employer not in Schedule 1.

It should be understood that the industry referred to in that section is not one which would be covered by the Act but for the fact that it was excluded by regulation of the Board passed under section 86; that is, it is not one coming within any of the three groups to which I earlier referred. The section applies to a particular employer who is carrying on a particular business or industry which is not one coming within any of the classes of industry which are covered by the Act,

that is, a particular industry or business included in those types of industries or businesses named in regulation 235 of the Board referred to on pages 15 and 16 hereof.

No right comparable to that given to an employer by section 88 is given to the workmen. In my opinion it would be fair to give to a group of workmen of an employer in any wholly excluded industry the same right that an employer in that industry presently has.

To that end I recommend the following extension of the Act:

> The Board may upon the application of four or more workmen in any industry of a class of industries for the time being not included in Part 1 add that industry either to Schedule 1 or Schedule 2 upon such terms and conditions as the Board may determine.

I suggest the number of employees be not less than four, for two reasons:

1. Practicality requires that there be some limitation and less than four would be impractical.
2. The Board has already excluded certain industries in which less than four workmen are usually employed. (Second Group, above.)

One of the conditions to be imposed by the Board might be that while that particular industry, i.e., the particular business of a particular employer, would be brought under Part 1 only those workmen within it who elected to come within Part 1 would get the protection thereby afforded or that Part 1 would apply only to a section of the industry. Those would be matters to be left to the good judgment of the Board.

It might be that advantage would not be taken of such a provision very frequently. However, by such a provision the door would be open and if the workmen did not choose to enter, at least they could not say they were prevented from doing so.

WAITING PERIOD

The so-called "waiting period" under the Act is and has always been seven days: that is to say, where a workman suffers a personal injury arising out of and in the course of his employment he receives no compensation unless the injury disables him "for the period of at least seven days from earning full wages at the work at which he was employed". If the disability lasts for at least seven days he receives compensation for such disability computed and payable from the date of the lay off.

Those representing labour before me urged that this waiting period be completely abolished; those representing the employers urged that it should be retained.

This waiting period does not restrict the right of the workman to medical aid. Under section 50 (1) he is entitled to medical aid immediately upon the accident happening, and such medical aid shall continue whether the accident disables him for less or more than seven days.

In 1948 there were a total of 161,733 accidents in the industries covered by the Act. That total included some which had occurred late in 1947 and were carried over into the Board's records for 1948. Each year there must be some such carry over. Of that total there were 109,904 accidents which disabled workers for less than seven days and for which those workers received no compensation but received medical aid only. To determine how many of those workers were disabled for one day, how many for two, and so on up to seven days, would require the examination of all the files dealing with those cases. That would be a tremendous task and, of course, I made no effort to have them thus analyzed.

Taking that record as indicative of the severity of all accidents in the industries or businesses covered by the Act, it would appear that approximately 68 per cent disable workers for less than seven days.

Those urging the abolition of the waiting period argued that even one day's loss of earnings by a worker is a serious matter for him particularly if he is supporting a family, and because it is such a serious matter he should be compensated therefor.

Those urging the retention of the waiting period at seven days put their arguments on these footings:

First: That if compensation were payable in every case from the date of disability, trivial injuries would be magnified and made the excuse for unwarranted absence at the expense of the accident fund or at the expense of the employers in Schedule 2 of the Act.

Second: That the expense of administering compensation to those whose injuries resulted in disability lasting less than seven days would be out of all proportion to the benefits received by them.

Third: That waiting periods are a regular feature of all disability insurance schemes, whether they be workmen's compensation schemes, or sickness insurance.

Fourth: That a waiting period constitutes part of the worker's contribution to the scheme of the Act.

In my opinion so long as there is a waiting period, no matter what may be its duration, at the expiration of which compensation is payable from the date of the accident there is likely to be some malingering.

If there were to be a waiting period for which compensation would not in any event be payable, of course the problem of malingering would not likely arise, but such a system does not appeal to me.

In my opinion there should be some waiting period, and if the disability extends beyond that period, compensation should be payable from the date of the accident. To my mind the only question is what should be the duration of that period. It should not be reduced to such a short period that the cost of administering compensation to those whose disability lasts only that long would be out of all proportion to the benefits received. Neither should it be so lengthy as to impose an unfair burden on workers whose disability lasts no longer than the waiting period.

In Prince Edward Island, Nova Scotia and Quebec if the disability continues for seven days, and in New Brunswick for four days, compensation is payable from the date of the disability. In Manitoba, Saskatchewan, Alberta and British Columbia if the disability lasts three days or less, no compensation is payable. If it lasts in Saskatchewan for more than three days, in Alberta and British Columbia for more than six days, and in Manitoba for more than fourteen days, compensation is payable from the date of the disability.

Considering the waiting period as representing part of the worker's contribution to the scheme of the Act—and I think it should be so regarded—it is pertinent to observe that the work week in very many industries has been shortened since the Act was first passed. To leave the waiting period at seven days in the face of the shorter work week means increasing the amount of the worker's contribution.

The present waiting period of seven days includes some non-working-days. In a given case it could include three non-working-days, viz., Saturday, Sunday and a Monday holiday. Since the purpose of the Act is to compensate the injured worker for loss of earnings I think the waiting period should be "working-days" but "working-days" should include all holidays for which the workman, if uninjured, would be paid without working on that day.

Considering all the factors entering into this question I have concluded that the waiting period should be reduced to four working-days, and I therefore recommend that section 2 (1) (*a*) of the Act be amended and as amended should read:

> (*a*) does not disable the workman for the period of at least four working-days from earning full wages at the work at which he was employed. Working-days shall include all holidays for which the workman, if uninjured, would be paid without working.

To make it less would mean:

1. The cost of administering the Act for the benefit of workers whose disability lasted less than four days would be out of all proportion to the benefits received by them.
2. It would unfairly transfer to the employers and to the public the contribution which the workers, for reasons that will be manifest from what I shall have to say later under the heading Scales of Compensation, should justly bear.

SERIOUS AND WILFUL MISCONDUCT

Section 2 (1) (*b*) of the Act provides that an injured worker is not entitled to compensation where the injury "is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement".

That provision was the subject of criticism in certain briefs submitted to me and in oral representations made during the public hearings.

The late Mr. Justice Middleton in his report on the operations of the Act dealing with this provision said in part, "What amounts to serious misconduct cannot be defined".

Those who criticized the section before me argued that if it cannot be defined then no tribunal could say in a given case that the injury was the result of serious and wilful misconduct and therefore the section should be deleted from the Act.

Having made that statement Mr. Justice Middleton hastened to say that "It is in each case a question of fact or degree".

I entirely agree with both those statements. "Serious and wilful misconduct" for the purposes of the administration of the Act requires no amplification. I am not in any doubt that in a given case the Board would be quite able to fairly and justly decide whether the injury was caused solely by the serious and wilful misconduct of the workman.

In its annual reports for the years 1915 to 1921 the Board stated the scope and application of those words as follows:

> The misconduct must be deliberate and intentional and not merely a thoughtless act or one done on impulse or on the spur of the moment. Inattention will not constitute serious and wilful misconduct nor as a rule mere imprudence, negligence, lack of care or caution or error of judgment on the part of the workman.
>
> The danger to himself or others involved in the act, the workman's appreciation of the probable consequences and his age and experience are to be considered. Disobedience to an express order or a deliberate breach of law or rule, well known to the workman and designed for his safety will generally be held to be serious and wilful misconduct. Each case must be determined upon its own particular circumstances.

It was urged upon me, particularly by counsel for the railways, that the Act should specifically provide that compensation shall not be payable if the workman is injured while in a state of drunkenness or under the influence of narcotics. In my opinion it is not necessary to add such a provision to the Act. It is plain common sense that a workman who goes to or remains on the job while in either of these physical or mental conditions is guilty of serious and wilful misconduct and I am certain the Board would so hold.

The retention of the section can work no injustice on a workman. On the other hand its deletion from the Act would work an injustice on industry and the public. It would be scandalous to impose upon either the burden of paying compensation to a workman for anything less than a serious disablement which was brought about solely by his own serious and wilful misconduct.

The Act is generous in limiting the disentitlement to something less than serious disablement. A worker whose injuries are caused solely by his own serious and wilful misconduct certainly does not merit any compensation regardless of the extent of his injuries. The only reason that I can think of for placing any limitation on the disentitlement is that in the case of death or serious disablement the dependants of the worker might otherwise become public charges. If that is the purpose of compensation in such cases, then in this respect the Act has been and is purely social legislation. This provision has been in the Act since its inception and similar provisions are to be found in other workmen's compensation Acts. This lapse of time and precedent or copy gives the limitation sufficient standing to dissuade me from recommending its deletion.

I therefore recommend that section 2 (1) (*b*) of the Act be retained in its present form.

SCALES OF COMPENSATION

I

In Non-fatal Cases

It will be convenient if I quote certain relevant sections of the Act.

38.—Where *temporary total disability* results from the injury, the compensation shall be a weekly payment of seventy-five per centum of the workman's average weekly earnings during the previous twelve months if he has been so long employed, but if not then for any less period during which he has been in the employ of his employer, and shall be payable so long as the disability lasts.

39.—Where *temporary partial disability* results from the injury, the compensation shall be a weekly payment of seventy-five per centum of the difference between the average weekly earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident, and shall be payable so long as the disability lasts, and subsection 3 of section 40 shall apply.

40.—(1) Where *permanent disability* results from the injury, the impairment of earning capacity of the workman shall be estimated from the nature and degree of the injury and the compensation shall be a weekly or other periodical payment during the lifetime of the workman, or such other period as the Board may fix, of a sum proportionate to such impairment not exceeding in any case the like proportion of seventy-five per centum of his average weekly earnings ascertained in the manner provided by section 38 and shall be payable notwithstanding clause *a* of subsection 1 of section 2.

(2) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations, which may be used as a guide in determining the compensation payable in permanent disability cases.

(3) Where the impairment of the earning capacity of the workman does not exceed ten per centum of his earning capacity, instead of such weekly or other periodical payment the Board shall, unless in the opinion of the Board it would not be to the advantage of the workman to do so, direct that such lump sum as may be deemed to be the equivalent of it shall be paid to the workman.

(4) Where the Board deems it more equitable, the Board may award compensation for permanent disability having regard to the difference between the average weekly earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable occupation after the accident, and the compensation may be a weekly or other periodical payment of seventy-five per centum of such difference, and regard shall be had to the workman's fitness to

continue in the employment in which he was injured or to adapt himself to some other suitable occupation.

42.—Notwithstanding anything to the contrary contained in Part I, the amount of compensation to which an injured workman shall be entitled shall not be less than,—

(*a*) for *temporary total disability*,

(i) where his average earnings are not less than $15 a week, $15 a week, and

(ii) where his average earnings are less than $15 a week, the amount of such earnings,

and for *temporary partial* or *permanent partial disability* a corresponding amount in proportion to the impairment of earning capacity; and

(*b*) for *permanent total disability* where the workman is unable to engage in any gainful occupation,

(i) where his average earnings are not less than $100 a month, $100, and

(ii) where his average earnings are less than $100 a month, the amount of such earnings.

43.—(1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated but not so as in any case to exceed the rate of $3,000.

(6) Where in any case it seems more equitable, the Board may award compensation, having regard to the earnings of the workman at the time of the accident.

11.—Where compensation is payable out of the accident fund and an employer carries himself on his pay-roll or an executive officer of a corporation is carried on the pay-roll of the corporation at a salary or wage which the Board deems reasonable, but not exceeding the rate of $3,000 per annum, and it is stated in the pay-roll statement furnished to the Board under section 90 that it is desired that such employer or executive officer shall be included as a workman, and the amount of his salary or wages is shown in the said statement and included in the estimate for the year, such employer or executive officer shall be deemed to be a workman within the meaning of this Act, and he or his dependants shall be entitled to compensation accordingly, but for the purpose of determining the compensation his earnings shall not be taken to be more than the amount of his salary or wages as shown by such pay-roll and statement.

98.—(1) Where the assessment is based on the pay-roll of the employer and there is included in it the wages or salary of a workman who has been paid more than at the rate of $3,000 per annum the excess shall be deducted from the amount of the pay-roll and the assessment shall be based on the amount of it as so reduced.

THE FIRST SUBJECT to which I direct attention in those sections is the limitation of $3,000 contained in sections 43, 11 and 98. During the discussions

before me that limitation was referred to as the MAXIMUM EARNINGS ON WHICH COMPENSATION SHALL BE COMPUTED.

The Act as originally passed fixed that limit at $2,000.

It may stimulate and clarify our thinking on this subject if I state three possible types of compensation schemes in each of them paying particular attention to the factor of earnings.

First: A scheme under which only some employees, namely, those whose yearly earnings are less than a stated amount, say $2,000 would, if injured, be compensated and those within that group would be compensated by reference to the full amount of their average earnings.

Second: A scheme under which all employees regardless of their earnings would, if injured, be compensated by reference to their yearly earnings not exceeding, say $2,000.

Third: A scheme under which all employees regardless of their earnings would, if injured, be compensated by reference to their yearly earnings without any ceiling on these earnings.

It will be observed that in each of these three schemes I have used the word "employees". Now let me apply those schemes to "workmen". At this point someone will ask, "What is the difference?" "Is not a 'workman' an 'employee'?" The answer, of course, is that a workman is an employee but for the purposes of workmen's compensation schemes not every employee is a "workman".

Ordinarily when we speak of the employees in a given industry we mean all the persons who work in that industry under a contract of hiring, manual workers, salesmen, clerical staff and others. Those persons are all workers in their own particular department. Ordinarily when we speak of the "workmen" in a particular industry we intend to thereby designate a particular group of those employees.

However within the range of workmen's compensation schemes we speak of "workmen" not in the sense in which that word is ordinarily used but in a wider sense.

For example, under the Workmen's Compensation Act in England a workman is defined in part as "any person who has entered into or works under a contract of service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise and whether the contract is expressed or implied" but does not include "any person employed otherwise than by way of manual labour whose remuneration exceeds three hundred and fifty pounds". Two features of that definition are to be noted:

First: An employee who does manual labour only is a "workman" regardless of his earnings.

Second: An employee whose duties are other than manual labour is a "workman" provided that his yearly earnings do not exceed three hundred and fifty pounds. If they exceed that amount he is not a "workman" within the Act.

Contrast that definition with the definition in the Ontario Act. I have stated it elsewhere in this report but for convenience I do so again in part. He "includes

a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour, or otherwise." No one who comes within that definition is excluded by reason of the amount of his yearly earnings.

Under the Ontario Act, however, there is a ceiling on the earnings by reference to which all employees who come within the definition are entitled to have their compensation computed.

The English Act does not come within any one of the three schemes which I earlier described. Under that Act manual workers come within the third scheme, that is they are compensated by reference to their yearly earnings without any ceiling on those earnings. All others who come within that Act come within the first scheme, that is they are limited to those whose earnings do not exceed a stated amount.

The Ontario Act would appear to come within the second of those three schemes. Then why was the maximum amount by reference to which compensation should be computed fixed originally at $2,000 and increased in 1943 to $2,500 and as of January 1, 1950 to $3,000? Chief Justice Meredith tells us in his report why he fixed the sum of $2,000 as the maximum. He said "I propose $2,000 as the limit because that sum is probably the maximum amount earned in a year by the highest paid wage earner." In other words "workmen" in the ordinary conception of that term were to be compensated by reference to their yearly earnings without any ceiling and all other employees regardless of their earnings were to be compensated by reference to their yearly earnings but with a ceiling on those earnings of $2,000. Actually therefore the Ontario Act comes partly within the second and partly within the third scheme. I perceive, as no doubt Chief Justice Meredith also did, that unless some maximum amount is named there would be endless difficulties in administering the Act. Disputes would constantly arise as to whether an injured workman was entitled to be compensated by reference to his yearly earnings with or without a ceiling thereon. Such disputes have not been infrequent under the English Act, which of course is administered differently to ours, and have reached the courts and gone even as far as the House of Lords. To obviate such disputes and simplify the administration of the Act the Chief Justice fixed a sum, which of course was an arbitrary amount, but which, as he put it, represented "the maximum amount earned in a year by the highest paid wage earner".

On this subject three submissions were made to me:

1. That the present limitation should be continued.
2. That it should be increased.
3. That there should be no limitation.

For reasons which I have already stated, that third submission fails.

On the evidence before me the sum of $3,000 does not to-day represent the yearly earnings of the highest paid workman. Some workmen in the running trades and in the mines, make as high as $4,000 a year.

I have concluded therefore that the maximum amount should be increased to $4,000 and for that purpose recommend that sections 11, 43 (1) and 98 (1) be amended by striking out the figures "$3,000" and substituting in their stead the figures "$4,000".

I am aware that in all the other provinces except Saskatchewan the limitation is $2,500 and in Saskatchewan, as in Ontario, it is $3,000. The limitation which I propose will, if adopted, bring Ontario substantially ahead of those other provinces. Nevertheless it seems to me that if Ontario is to adhere to that part of the general scheme and purpose of the Act as embodied in this particular feature of it, the maximum amount must be increased to the figure which I have named.

THE SECOND SUBJECT to which I direct attention is the PERCENTAGE RATE IN SECTIONS 38, 39, 40 (1) AND 40 (4).

Two submissions were made to me concerning that rate:

First: That a percentage rate of seventy-five is too high.

Second: That it is not high enough and should be increased to one hundred per cent.

The percentage rate in the Act as originally passed was fifty-five. It was increased to sixty-six and two-thirds in 1920, and to seventy-five in 1949, to become operative as of January 1, 1950.

It was suggested that the percentage, whatever it might be, should be applied to the "net" earnings of the worker rather than the "gross". I do not agree. The worker's obligations to the State, as represented by income tax and unemployment insurance, varies according to their stations in life and their total earnings. Those obligations have no relation to the debt which industry owes them in the event of their injury. That debt is related only to their loss of gross earnings, and the fact that the State may relieve them from those obligations when they are receiving compensation instead of wages has no relation to the respective rights and liabilities of the employee and the employer.

That suggestion arose out of a discussion during the hearings before me of the "before" and "after" financial position of an injured worker. Three illustrations were given.

Number One: An unmarried workman with no dependants.

	Yearly Earnings	$3,000.00	
	Deductions:		
	Income tax		$ 320.00
	Unemployment insurance		21.84
	Transportation to and from work		30.00
Before	— Net from earnings		2,628.16

After — Compensation computed at the rate of 75 per cent of gross earnings equals $2,250 per year, i.e., 85.5 per cent of the net from earnings.

Number Two: A married worker with two or more children.

	Yearly Earnings	$2,280.72*	
	Deductions:		
	Income tax		$ 0.00
	Unemployment insurance		21.84
	Transportation		30.00
Before	— Net from earnings		2,228.88

After — Compensation computed at the rate of 75 per cent of gross earnings equals $1,710.54 per year, i.e., 76.8 per cent of the net from earnings.

**This was said to be the average earnings of all workers in all industries.*

Number Three: A married worker with four children.

		Yearly Earnings	$3,600.00	
		Deductions:		
		Income tax		$ 150.00
		Unemployment insurance		21.84
		Transportation		30.00
Before	—	Net from earnings		3,398.16

After — Compensation computed at the rate of 75 per cent of $3,000 (being the present ceiling) equals $2,250 per year, i.e., 66.2 per cent of the net from earnings. If the ceiling on maximum earnings were increased to $4,000, the compensation would be at the rate of $2,700 per year, i.e., 79.5 per cent of net from earnings.

The deductions in each of the foregoing cases are items of expense which the worker escapes when he goes on compensation. There are obviously other items which could be included in those deductions, e.g., union dues, clothing, tools, etc., but I have not bothered to include them.

The foregoing illustrations are informative, but for the reasons I have given I do not think they have any bearing on the question.

This subject has been before the courts both in England and in Ontario. In England in the case of *Jordan v. Limmer & Trinidad Lake Asphalt Co. Ltd.*, and another, reported in 1946, All England Reports, page 527, it was held that "in assessing the amount of special damage to be awarded for loss of earnings due to absence from employment as a result of personal injuries by accident no deduction should be made in respect of income tax to which the plaintiff would have been liable if he had been able to continue in employment".

In Ontario in the case of *Bowers et al v. J. Hollinger & Co. Limited et al* reported in 1946 Ontario Reports, page 526, it was held that "in assessing damages for loss of wages resulting from physical injuries, the basis of assessment is the plaintiff's gross wages, without taking into consideration deductions which might have been made by the employer on account of income tax or unemployment insurance".

I conceive the question to be simply this: In addition to the other benefits given to the worker by the Act, what percentage of his earnings should he also receive in order that the employer's debt to him be satisfied, remembering, as we always must, that the scheme of the Act includes some contribution by labour. As I put it to the parties during our discussions—and they all agreed—my approach to the problem should be this: figuratively I hold the scales of justice in my hands; into the employer's pan of the scale I put the debt that industry owes to injured workmen and into the other pan, viz., the workmen's, I put the benefits given to them, and also their contribution, and if the scales are then in balance, the debt is paid. If they are not, there is something wrong with the Act.

What then are the factors that make up the debt? I put them in the employer's pan of the scales. They are:

1. Medical expenses made necessary by the injury.

2. Loss of earnings. These include:

   (*a*) Present earnings.

   (*b*) Prospective earnings. These terminate when the worker, due to age or illness or accident outside his employment, must lay down his tools and work no longer. They may be enhanced by improvement in his skill or general increases in wage rates. On the other hand they may be adversely affected by labour disputes resulting in strikes or lock-outs, or by other periods of unemployment.

3. Pain and suffering.

Then what does the Act put into the worker's pan of the scales? There it puts the following:

1. Full medical aid.

2. Seventy-five per cent of the worker's average earnings. That shall *not be less than:*

   (*a*) In cases of temporary total disability

      (i) $15 per week where his average weekly earnings are that amount or more.

      (ii) Where his average weekly earnings are less than $15 a week, the full amount of those earnings.

   (*b*) In cases of partial disability, either temporary or permanent, an amount corresponding to the amounts in cases of temporary total disability, but proportioned to the impairment of earning capacity.

   (*c*) In cases of total disability where the workman cannot engage in any gainful occupation

      (i) $100 a month where his average monthly earnings are that amount or more.

      (ii) Where his average earnings are less than $100 per month, the full amount of those earnings.

Those payments continue as long as the disability lasts, and if it continues for life, then the payments likewise continue for life, notwithstanding that had the worker not been injured, age, or illness or accident outside industry might have cut down or entirely extinguished his earning power. We know that in every year the average worker loses some time from his job due to his own illness or illness in his family. We know too that inevitably there comes a time when workers, due to advanced years and the frailties of age must lay down their tools and work no longer. Where compensation is payable the Act ignores those factors. We are accustomed to what are called slack times, but the Act also ignores that factor.

The compensation is paid even though the accident may have been caused solely or partly by the workman's own negligence. It is also paid in cases of serious disablement, even though the accident was caused by the serious and wilful misconduct of the workman. The payments are certain; they are not contingent upon the present or future financial position of the employer.

3. The full cost of rehabilitation.

4. The workman's contribution to the scheme of the Act. This includes the following:

   (*a*) He foregoes compensation for the waiting period in those cases where the disability does not last that long.

   (*b*) He bears twenty-five per cent of lost earnings, but obviously lost earnings could continue only for the period when he would otherwise be earning.

   (*c*) He foregoes compensation for pain and suffering.

Are the scales now in perfect balance? I cannot say. No one can. Perfect compensation is impossible to achieve. All I can hope to do on this inquiry is to determine whether they are so far out of balance as to result in a substantial injustice to the employer or the workman. If they are, then something should be added to or taken from the employee's pan of the scale. I am not satisfied that they are so far out of balance as to require such adjustment. In reaching that conclusion any doubts I have had I have resolved in favour of the worker.

We have travelled a considerable distance since the day when Chief Justice Meredith recommended, and the Legislature of this Province approved, a scale of compensation amounting to fifty-five per cent of the worker's average earnings. Over the years public thinking the world over has changed in so far as the lot of the workman is concerned, and in this Province legislation in respect to this Act has kept pace with public opinion.

Merely for comparative purposes I have set out below and in the immediately following pages a statement of the compensation in non-fatal cases authorized by the workmen's compensation Acts in the various provinces in the Dominion.

For Permanent Disability		For Temporary Disability		Maximum Earnings Reckoned
Total	Partial	Total	Partial	
		ONTARIO		
Based on impaired earning capacity estimated from nature and degree of injury but not to exceed 75 per cent of earnings. Minimum $100 per month or earnings, if less.	Based on impaired earning capacity estimated from nature and degree of injury. If more equitable, 75 per cent of difference in earnings before and after accident.	75 per cent of earnings for duration of disability. Minimum $15 per week or earnings, if less.	75 per cent of difference in earnings before and after accident for duration of disability.	$3,000 per annum.
		PRINCE EDWARD ISLAND		
⅔ of earnings. Minimum $12.50 per week or earnings, if less.	⅔ of difference in earnings before and after accident. If disability 25 per cent or more, minimum as in total disability in proportion to disability.	⅔ of earnings for duration of disability. Minimum $12.50 per week or earnings, if less.	⅔ of difference in earnings before and after accident for duration of disability.	$2,500 per annum.

For Permanent Disability		For Temporary Disability		Maximum Earnings Reckoned
Total	Partial	Total	Partial	
		NOVA SCOTIA		
2/3 of earnings. Minimum $15 per week.	2/3 of difference in earnings before and after accident. If disability 25 per cent or more, average earnings must be taken as not less than $18.75 per week.	2/3 of earnings for duration of disability. Minimum $12.50 per week or earnings, if less.	2/3 of difference in earnings before and after accident for duration of disability.	$2,500 per annum.
		NEW BRUNSWICK		
Average earnings but not in excess of 2/3 of $2,500.	Amount determined by Board. Lump sum may be given.	2/3 of earnings for duration of disability. Minimum $12.50 per week or earnings, if less.	If earning capacity diminished by more than 10 per cent, 2/3 of difference in earnings before and after accident for duration of disability.	$2,500 per annum.
		QUEBEC		
2/3 of earnings. Minimum $15 per week or earnings, if less.	2/3 of difference in earnings before and after accident.	2/3 of earnings for duration of disability. Minimum $15 per week or earnings, if less.	2/3 of difference in earnings before and after accident for duration of disability.	$2,500 per annum.
		MANITOBA		
2/3 of earnings. Minimum $15 per week or earnings, if less.	2/3 of difference in earnings before and after accident.	2/3 of earnings for duration of disability. Minimum $12.50 per week or earnings, if less.	2/3 of difference in earnings before and after accident for duration of disability.	$2,500 per annum.
		SASKATCHEWAN		
75 per cent of earnings. Minimum $15 per week.	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury, or if more equitable, 75 per cent of difference in earnings before and after accident.	75 per cent of earnings for duration of disability. Minimum $15 per week or earnings, if less.	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury, or if more equitable, 75 per cent of difference in earnings before and after accident for duration of disability.	$3,000 per annum.
		ALBERTA		
2/3 of earnings. Minimum $15 per week or earnings, if less.	Proportion of 2/3 of earnings based on impaired earning capacity.	2/3 of earnings for duration of disability. Minimum $15 per week or earnings, if less.	Proportion of 2/3 of earnings based on impaired earning capacity for duration of disability.	$2,500 per annum.

For Permanent Disability		For Temporary Disability		Maximum Earnings Reckoned
Total	Partial	Total	Partial	
BRITISH COLUMBIA				
2/3 of earnings. Minimum $12.50 per week or earnings, if less.	2/3 of difference in earnings before and after accident or may be based on impaired earning capacity.	2/3 of earnings for duration of disability. Minimum $12.50 per week or earnings, if less.	2/3 of difference in earnings before and after accident or may be based on impaired earning capacity for duration of disability.	$2,500 per annum.

THE THIRD SUBJECT to which I direct attention is Average Earnings.

This is the third factor in determining the scale of compensation in non-fatal cases. It is a factor in cases of temporary total disability by virtue of section 38, in cases of temporary partial disability by virtue of section 39 and in cases of permanent disability by virtue of section 40 (1) and (4).

Section 43 (1) defines the manner in which average earnings are to be computed.

Section 43 (6) empowers the Board to award compensation on the earnings at the time of the accident.

I have already quoted all those sections.

It was submitted to me by certain representatives of labour that if the daily earnings of an injured workman were higher at the time of the accident than at other times during the previous twelve-month period he should be compensated by reference to those higher earnings rather than by reference to his average earnings in the twelve-month period.

I should think that in cases where a workman is off work for a short time due to a temporary disability caused by accident it would only be fair to compensate him by reference to his actual earnings at the date of the accident whether they should turn out to be greater or less than his average earnings provided that it could be reasonably determined that for the period of the lay off his daily earnings if he had been working would have been the same as at the date of the accident.

If, on the other hand, the period of partial disability is long or if the disability is permanent, it might be grossly unfair to the employee or the employer to fix the scale of compensation or pension by reference to the earnings of the workman at precisely the time of the accident. The remuneration which the workman was earning at that date might be abnormally high due to some temporary or exceptional cause and not at all representative of his normal earnings and in that event to fix his rate of compensation or his pension at that abnormally high rate would work an injustice on the employer. For similar reasons the worker's earnings at the date of the accident might be abnormally low and to fix the amount of the compensation or pension on the basis of his then earnings would work an injustice upon him.

If a workman very shortly before the accident had been promoted to a higher grade of employment carrying a higher wage rate, it would be unfair to him to fix

the amount of his compensation or pension by reference to his average earnings over a twelve-month period.

Similarly the injured workman might have been off work for some period of time during the twelve-month period immediately preceding the accident due to illness or other cause beyond his control and in that event it would be unfair to him to compute the amount of his compensation or pension by reference to his average earnings over a period of time which included the period when he was off work.

Other circumstances are covered by section 43 (2) which is as follows:

> 43.—(2) Where owing to the shortness of the time during which the workman was in the employment of his employer or the casual nature of his employment or the terms of it, it is impracticable to compute the rate of remuneration as of the date of the accident regard may be had to the average weekly or monthly amount which during the twelve months previous to the accident was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed then by a person in the same grade employed in the same class of employment and in the same locality.

The Legislature has given to the Board a very wide discretion for the express purpose of enabling it, in the many and varied circumstances which may exist, to determine fairly and justly the loss of earnings suffered by an injured workman.

The Board by its order dated November 3, 1947, laid down the following rule for determining compensation in cases of temporary total and temporary partial disability:

> The earnings used as the wage basis of compensation shall be the average actual earnings for the four weeks or shorter period of employment immediately preceding the accident (omitting any badly broken week) or, if warranted, the nominal weekly wage, provided that where equitable regard may be had to the earnings for the twelve months or shorter period of employment prior to the accident.

The three members of the Board could not possibly personally deal with every claim filed by injured workmen. In 1948 there were 49,390 claims for temporary disability and 2,199 for permanent disability finalized. Many of such claims never reach the members of the Board but are dealt with by the claims department. The foregoing directive was for the guidance of the claims department and the formula therein laid down is within the discretion of the Board by the sections of the Act which I have been discussing.

In my opinion those sections are adequate for computing the amount of the compensation or pension in non-fatal cases and I recommend no change in them.

THE FOURTH SUBJECT to which I draw your attention is PENSIONS FOR PERMANENT PARTIAL DISABILITY.

The representatives of the railways complained vigorously of the fact that in many instances an employee has been permanently partially disabled and the Board has fixed the amount of his pension on the footing that he will thereafter suffer a loss of earnings when, in fact, he is later restored to his former position

with no loss of earnings. It was admitted by the representatives of the railway employees that there were a number of such cases.

If that situation exists in the railway industry, it is a reasonable assumption that it also exists in other industries both in Schedule 1 and Schedule 2.

Obviously it was never intended that as a result of the operations of the Act, an injured workman would be better off financially after the accident than he was before. The whole purpose of the Act is that he shall be compensated for the impairment of his earning capacity. If it were possible to measure accurately the extent of that impairment, the situation of which complaint is now made would never arise. It has arisen by reason of the difficulty in measuring the degree of impairment.

Under the Act originally the compensation for permanent partial disability was a weekly payment based on the difference between the average weekly earnings of the workman before the accident and the average amount which he was earning or able to earn in some suitable employment or business after the accident, that is the award was to be based on the ascertained loss of earnings.

From 1915 to 1917, the experience of the Board indicated that the actual wages received or the failure to earn any wages after the accident was not a satisfactory guide in determining the extent of the loss of earning power. The attitude of both the workman and the employer after the accident was a factor of considerable importance in determining the extent of the loss. Some workmen were more anxious than others to become rehabilitated and overcome or minimize their handicap. It was suggested that some employers would re-employ the workman at a wage rate close to the rate prior to the accident for the specific purpose of cutting down the pension and then, some time after the Board had fixed the amount of the pension, they would lay the workman off on some pretext. The workman might then find it difficult or impossible to find another job on account of his physical disability, and workmen who had not been re-employed by their former employer might have similar experiences. General economic conditions had much to do with the chances of the workman getting a job and with his earnings if he did get one.

For the foregoing reasons the Board recommended that the Act should be amended so as to permit the Board to disregard the actual earnings of the workman after the accident. That recommendation was adopted by the Legislature and in 1917 it amended the Act by adding a provision that:

> Where deemed just, the impairment of earning capacity may be estimated from the nature of the injury having always in view the workman's fitness to continue the employment in which he was injured or to adapt himself to some other suitable occupation.

Thereafter the Board could measure the extent of impairment by reference either to earnings or to the nature of the physical handicap. When measuring it by the latter factor a rating schedule was used, that is a certain percentage for the loss of an eye, a hand, a foot, and so on.

From 1917 to 1934 the great majority of pensions for permanent partial disability were calculated by reference to the physical nature of the injury only. The experience in those years was not satisfactory. It was found that certain awards

were really in the nature of "damages" rather than being awards for loss of earnings. An injury of a given type might not reduce the earning capacity of a workman who was employed at unskilled labour but the same type of injury might seriously reduce the earning capacity of a skilled workman. There were serious complaints from employers, particularly those in Schedule 2, who, owing to union rules or otherwise, had re-employed the injured workman at his former or even a higher wage rate. In that group it was discovered that from forty to fifty per cent of workmen who had been pensioned because of permanent partial disability were re-employed without any wage loss.

In 1935 the Board changed its policy to one under which the pension was determined by reference to the experience in each case of actual wage loss as the prime factor and the estimated impairment in earning power due to the nature of the injury as the secondary factor.

The following table shows the extent to which awards by way of pensions for permanent disability were reduced by the adoption of that formula. In that table I have included the record of awards in cases of temporary disability as indicating that the sharp decline in pensions for permanent disability was not due to a decline in employment generally.

Year	Awards for Temporary Disability	Awards for Permanent Disability	
1929	32,920	3,372	Before the change
1930	25,613	3,147	
1931	20,543	2,495	
1932	15,466	1,805	
1933	14,235	1,511	
1934	22,020	1,790	
1935	23,024	992	After the change
1936	22,954	835	
1937	26,427	1,049	
1938	21,501	936	

That table bears out what I earlier stated viz., that between forty and fifty per cent of permanently injured workmen were re-employed without any wage loss.

It should be pointed out that section 23 of the Act provides:

> Any weekly or other periodical payment to a workman may be reviewed at the request of the employer or of the workman, if the compensation is payable by the employer individually, or, if the compensation is payable out of the accident fund, of the Board's own motion or at the request of the workman and on such review the Board may put an end to or diminish or may increase such payment to a sum not beyond the maximum prescribed.

A disabled workman, to-day, may be employed without any loss of earnings. But what of the future? If next year or the year after he finds himself out of employment due to his physical handicap he is entitled to apply to the Board to have his pension reviewed. If on such application the circumstances justify it being increased either because he is without any employment or because of his low wage rate due to his disability and he was injured in an industry in Schedule 1, there should be money in the accident fund with which to pay him the increased pension. There is always a potential claim in his favour against that fund and it is argued that even though to-day he is not suffering any loss of earnings, industry should be assessed to-day to provide against the day when his potential claim

may become an actual claim. Section 81 requires that the accident fund shall at all times be "sufficient to meet all payments to be made out of that fund as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened". The Board informs me that during the period 1935 to 1938 when pensions were calculated on the actual wage loss as the prime factor there was piled up against the accident fund an outstanding potential liability estimated to amount to hundreds of thousands of dollars.

As of December 1, 1938 the Board for the reasons I have indicated reverted to the policy in effect from 1915 to 1917 with this added factor: that where the rating schedule does not compensate for loss of earnings the compensation shall be increased to make up the deficit. That policy removed inequities to workmen that might arise by a strict application of the rating schedule but there may still be and undoubtedly are cases where the strict application of the rating schedule gives the workman more than his present loss of earnings.

A partially disabled workman who, to-day, is receiving a disability pension notwithstanding that his present earnings have not been adversely affected by the disability admittedly is to-day receiving compensation to which, if the provisions of the Act are strictly interpreted, he is not presently entitled. In my opinion, however, those relevant provisions are not to be thus strictly applied, that is to say, in measuring the loss of earning capacity the Board is not required to apply the precision and exactness of an apothecary's scale. As I have elsewhere said it is impossible to award perfect compensation and this is none the less so even though the Act prescribes that the standard of measurement in partial disability cases shall be the loss of earnings. If the partially handicapped workman has the courage, resolution and fortitude to overcome his disability to the point that his earning capacity is not, at least for the time being, adversely affected thereby in my respectful opinion it would be neither economically or socially sound to take from him the benefits of his own successful efforts to rehabilitate himself. His own morale is a matter of importance not only to himself, but to all those with whom he associates including his employer. I have elsewhere stressed the fact that this Act is not social legislation; nevertheless the warmth of the philosophy which it embraces tempers the coldness of those provisions which, on a strict and literal reading would seem to require that the partially disabled workman should receive no more and no less than the exact amount of his loss of earnings. Those provisions, having regard to the very nature of the legislation, must be interpreted humanely.

The problem with which the Board is confronted in assessing the extent of partial disability is always difficult. In my respectful opinion the present provisions of the Act relating to that problem are adequate and the manner in which the Board applies them are fair and reasonable.

The following submission was made to me by certain representatives of labour:

> The principle of Workmen's Compensation intends that compensation be paid while the disability lasts, which should be continued until such times as he, "the injured workman", is able to resume his usual occupation. In keeping with that principle the injured workman should be treated as a total disability case until he has fully recovered. To effect the correction which we believe necessary and justified, we suggest that the word "total" be deleted from the first line of section 38 and that section 39 be deleted in its entirety.

The Act is based on the principle that industry should compensate the injured workman in proportion to the extent of his disability. Therefore when a workman who originally was totally disabled as a result of his injury has progressed toward complete recovery to the point where he is physically able to perform lighter work, he is no longer a total disability case and from that point forward he is entitled to be compensated in proportion to the extent of his partial disability only.

During the discussions before me this phase of the Act was subjected to very close analysis.

In order to point up my views it is convenient to first take the case of the injured workman at the point where he has fully recovered. We will assume, in order not to clutter up the illustration, that, from the date of the injury until the date when he has fully recovered, he has been adequately compensated. Industry has thereby paid the debt which it owed him. If, when he has fully recovered, there is no work available for him, that circumstance does not place a burden on industry to provide financial assistance to him. If financial assistance is needed, as I have elsewhere stated in this report, it must come from some other source.

Now when the workman has progressed to the stage where he has physical capacity for some type of work although not his usual type and there is no work within the range of his then physical capabilities should industry, by reason of that circumstance, continue to pay him as though he continued to be wholly incapacitated?

Before answering that question it may be serviceable to point out that the permanently totally disabled workman continues to receive compensation even though the labour market shrinks to the vanishing point. The fact that he would have no earnings even if he had no incapacity does not affect him. Similarly the workman who is in receipt of a pension for permanent partial disability, say the loss of a hand, continues to receive it even though there would be no work available to him if he had both his hands.

Likewise the temporarily partially disabled workman should continue to be compensated for his partial disability while it lasts even though if he had his full physical abilities there would be no work available for him. It is quite a different matter however to say that if there is no work within the range of the ability which he has left he should be nevertheless compensated as though he was totally disabled. He is in no different position than the workman who has fully recovered and finds no work available. If either or both of them are entitled to financial aid it must come to them by way of unemployment insurance and not by way of workmen's compensation.

Therefore I recommend that sections 38 and 39 should not be changed.

II

In Fatal Cases

The monetary benefits provided by the Act in cases where death has resulted from the injury are set out in section 35. Those on which submissions were made to me are as follows:

(1) (*a*) the necessary expenses of the burial of the workman not exceeding $125;

(*b*) where owing to the circumstances of the case the body of the workman is transferred for a considerable distance for burial, a further sum not exceeding $125 for necessary extra expenses of the burial thus entailed;

(*c*) where the widow or an invalid husband is the sole dependant, a monthly payment of $50;

(*d*) where the dependants are a widow or an invalid husband and one or more children, a monthly payment of $50, with an additional monthly payment of $12 to be increased upon the death of the widow or invalid husband to $20 for each child under the age of sixteen years;

(*e*) where the dependants are children, a monthly payment of $20 to each child under the age of sixteen years;

(*f*) where the dependants are persons other than those mentioned in clauses *c* to *e*, a sum reasonable and proportionate to the pecuniary loss to such dependants occasioned by the death, to be determined by the Board, not exceeding in the whole $100 per month.

(1*a*) Where in the opinion of the Board the furnishing of further or better education to a child appears advisable, the Board in its discretion may on application extend the period to which compensation shall be paid in respect of the child for such additional period as is spent by the child in the furthering or bettering of its education but in no case beyond the age of eighteen years unless the child in respect of whom compensation is being paid is attending school and reaches the age of eighteen years during the school year, in which case compensation may be continued until the conclusion of the school year.

(1*b*) Exclusive of the expenses of the burial of the workman and the lump sum of $100 the monthly compensation payable under subsection 1 shall not in any case exceed the average monthly earnings of the workman, and if the monthly compensation so payable exceeds such earnings it shall be reduced accordingly, and where several persons are entitled to monthly payments the payments shall be reduced proportionately, provided that the minimum monthly compensation shall be,—

(*a*) where the widow or an invalid husband is the sole dependant, $50;

(*b*) where the dependants are a widow or an invalid husband and one or more children, $50 for the widow or invalid husband with a further payment of $12, to be increased on the death of the widow or invalid husband to $20, for each child, not exceeding in the whole $100; or

(*c*) where the dependants are children, $20 to each child, not exceeding in the whole $100.

The submissions made to me can be considered under two headings:

1. Burial Expenses

In my opinion the amount allowed by clauses *a* and *b* for burial expenses is entirely inadequate and should be increased. A survey by the Board of burial expenses in eighty-one cases covering a six-month period ending October 31, 1949,

showed that the average cost in those cases was $320.29. The cost of burial expenses, however, will vary according to the wishes of the deceased's relatives and their ability to pay.

I recommend that section 35 (1) (*a*) be amended by striking out the figures "125" and substituting the figures "200".

I also recommend that section 35 (1) (*b*) be amended by striking out the figures "125" and substituting therefor the figures "175".

2. Pensions to Widows or Invalid Husbands and Children

It must always be a difficult matter to determine the fairness and adequacy of pensions granted to dependants of the workman who is killed in industry. There is such a wide variety of circumstances in such cases—the earnings of the workman, the number of his children, the variation in their ages—that it is impossible to work out a formula that would not result in some inequities.

My approach to this problem has been to take the case of the average workman and to compare the consequent financial effect on his family in the case where he is totally disabled with the effect in the case where he is killed. I do this for the reason that in both cases the family loses its "bread-winner". I have already stated that the compensation payable to that bread-winner in cases where he is totally disabled is fair and equitable. Comparable benefits should be provided to his dependants where he is killed.

This average workman has a wife and four children, the children varying in ages but all under sixteen years. There is some authority for taking that as representing the members of the household of the average workman.

According to The Labour Gazette for November, 1949, the average weekly wages of workmen in industry in Ontario as of August 1, 1949, was $44.41. Those industries, however, included retail stores in which the average weekly earnings of the employees was $35.23. Retail stores are not covered by the Act. The average wages of workers in industries covered by the Act would be somewhat higher than $44.41. I have assumed that they would amount to $48 a week, that is $2,496 per year or $208 per month.

If that workman should be totally disabled in industry, he would receive a monthly pension of $156.

If he should be killed, his widow would receive $50 and each of his children $12, making a total of $98 monthly.

Therefore, where the workman, the bread-winner, is totally disabled there is available for keeping the family together and maintaining himself and them, the sum of $156 and where he is killed the amount available monthly to the widow and children for the purpose of keeping the remaining members of the family together and maintaining themselves is $58 less or, reduced to a weekly basis, $13.38 less weekly.

From the foregoing it will be seen that the total amount received by way of pensions by the dependants on the death of the average workman is not out of

proportion to the amounts available for their support and maintenance in the case where he has been totally disabled.

For comparative purposes I give you below an analysis of the monthly pensions provided in fatal cases by the workmen's compensation Acts of all the provinces, not including Newfoundland.

Widow or Invalid Widower	Children		Where Only Dependants are Other than Consort and Child	Maximum
	With Parent	Orphans		
		ONTARIO		
$50 plus sum of $100.	Under 16, $12 each. These amounts may be continued till child is 18 for its education.	Under 16, $20 each.	Maximum $100.	Average earnings. Minimum of $50 to consort. $12 to each child or $20 to orphan child unless total benefits exceed $100.
		PRINCE EDWARD ISLAND		
$40 plus sum of $100.	Under 16, $10 each. Maximum to consort and children $80. These amounts may be continued till child is 18 for its education.	Under 16, $20 each. Maximum $80.	Sum reasonable and in proportion to pecuniary loss. Maximum to parent or parents $30. Maximum in all $45.	⅔ of earnings.
		NOVA SCOTIA		
$50 plus sum of $100.	Under 16, $12.50 each. Maximum to consort and children $100. These amounts may be continued till child is 18 for its education.	Under 16, $22.50 each. Maximum $90.	As in P.E.I.	⅔ of earnings.
		NEW BRUNSWICK		
$40 plus sum of $100.	Under 18, if attending school $10 each.	Under 18, if attending school $20 each.	Sum reasonable and in proportion to pecuniary loss.	⅔ of earnings.
		QUEBEC		
$45 plus sum of $100.	Under 18, $10 each.	Under 18, $15 each.	As in N.B.	⅔ of earnings. Minimum $55 to consort and one child, $65 if more.
		MANITOBA		
$50 plus sum of $100.	Under 16, $12 each. These amounts may be continued till child is 18 for its education.	Under 16, $20 each.	As in N.B. Maximum $30 each. Maximum in all, $60.	⅔ of earnings. Minimum $12.50 per week if one child; $15 if more.

Widow or Invalid Widower	Children		Where Only Dependants are Other than Consort and Child	Maximum
	With Parent	Orphans		
		SASKATCHEWAN		
$50 plus sum of $100.	Under 16, $12 each. These amounts may be continued till child is 18 for its education.	Under 16, $25 each.	As in N.B.	Average earnings but minimum $50 to widow or invalid widower; $62 to widow or widower and one child; $70 if more children.
		ALBERTA		
$50 plus sum of $100.	Under 18, $15 plus $10 if attending school between 16 and 18 years.	Under 18, $15 plus amount not exceeding $10 for education between 16 and 18 years.	As in N.B. Maximum to parents $50. Maximum in all $85.	
		BRITISH COLUMBIA		
$50 plus sum of $100.	Under 16, $12.50 each; if attending school, $12.50 between 16 and 18 years.	Under 18, $20 each, $17.50 if able to attend school between 16 and 18 years and not attending.	(*a*) As in N.B. Maximum $40 to parent or parents. Maximum in all, $55. (*b*) If there is widow or invalid widower or orphans, maximum to parent or parents $40.	

It is apparent from the above analysis that the pensions provided by the Ontario Act are as generous as, and in some instances more generous than, corresponding benefits under the Acts of the other provinces.

Apart from the allowance for burial expenses I recommend no change in section 35.

MINIMUM AMOUNT OF COMPENSATION

This is covered by sections 42 and 35 (1*b*).

In the original Act there was no amount fixed as the minimum which the injured workman would receive for either temporary or permanent disability or which his dependants would receive in the event of his death by accident. The Act then, as now, fixed a maximum amount of earnings by reference to which compensation would be computed.

There was no reason within the scope of the purpose of the Act for specifying any minimum amount of compensation. The whole theory of the Act was that if industry injured its workman, it should compensate him for his consequent loss of earnings or, if he was killed, his dependants should receive comparable compensation. That loss was a debt owing by industry to the workman or his dependants and the amount of that debt was measured by reference to the worker's average earnings. In measuring that debt all workmen were treated alike, those in the higher wage brackets and those in the lower. There was no discrimination between them. If a given percentage of the earnings was the proper standard by which to measure the debt in respect of those in the higher wage brackets, then it was a proper standard in the lower ones. In my opinion that was a sound basis.

In 1920 the Legislature amended the Act by adding a provision as follows:

> The amount of compensation to which an injured workman shall be entitled for temporary total or permanent total disability under the provisions of *The Workmen's Compensation Act* shall be not less than $12.50 per week or where his average earnings are less than $12.50 per week the amount of such earnings, and for temporary partial or permanent partial disability a corresponding amount in proportion to the impairment of earning capacity.

In 1947 the Act was again changed by fixing the minimum amounts as they now appear in section 42, already quoted.

Presently a workman earning an average of $40 a week, and who is temporarily totally disabled, would receive $30 a week compensation, while a workman whose earnings for any reason are $15 per week, would receive $15 per week compensation.

A workman earning an average of $200 a month and who is permanently totally disabled would receive $150 a month compensation while a workman earning $100 a month would receive $100 a month compensation.

The original Act provided for pensions of specific amounts to dependants in fatal cases but there was also a provision that if the total of those pensions exceeded fifty-five per cent of the workman's average earnings, they should be decreased proportionately. That section was later deleted from the Act.

In 1949 the Legislature added section 35 (1*b*) providing for minimum pensions in fatal cases.

Why should the debt owing by industry be greater in proportion to his earnings in the case of the workman in the lower wage bracket than in the case of the

workman in the higher? For myself I think it is not greater, and if the fundamental theory and the scope and purpose of the Act were adhered to, the statutory obligation imposed on industry would be no greater in the one case than in the other.

The argument advanced in support of these minimum amounts is that they are necessary in order to provide the injured workman or his dependants with subsistence, and that less than those amounts would be insufficient for that purpose. I think that the simple answer to that argument is that once industry has satisfied its debt to the workman no further obligation rests on it and if the workman or his dependants require some amount weekly or monthly over and above the amounts he or they receive in payment of the debt, the duty of providing it rests on society generally and not on industry as one segment of society. In other words, the argument in support of those minimums is based on the theory that this Act, when applied to the workman in the lower wage bracket, is social legislation and not compensatory.

I do not recommend the deletion from the Act of either section 42 or section 35 (1*b*). It would be cruel to do so now. I draw them to your attention for the purpose of pointing out the danger of embodying in this Act provisions that tend to distort its real purpose.

PAYMENT OF CLAIMS

In certain briefs and during the public hearings complaints were made that frequently an injured workman who had suffered a compensable injury had to wait an unreasonable length of time before receiving his first payment.

The Board has confirmed to me the fact that on occasions there have been undue delays. Such delays, however, are not due to any weaknesses in the Act but to non-compliance with its provisions or the regulations made thereunder by either the employer, the workman, or the doctor.

Section 114 of the Act provides as follows:

> 114.—(1) Every employer shall within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages or which necessitates medical aid notify the Board in writing of the,—
>
> (*a*) happening of the accident and nature of it;
>
> (*b*) time of its occurrence;
>
> (*c*) name and address of the workman;
>
> (*d*) place where the accident happened;
>
> (*e*) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury;
>
> and shall in any case furnish such further details and particulars respecting any accident or claim to compensation as the Board may require.
>
> (2) For every contravention of subsection 1 the employer shall incur a penalty not exceeding $50.
>
> (3) Every employer who makes default in reporting or furnishing particulars of any accident or claim shall in addition to any other penalty or liability pay to the Board, if so ordered by the Board, the amount of compensation and medical aid awarded in respect of such accident or claim in accordance with the evidence or information otherwise obtained by the Board.

Immediately on receipt of that notice the Board sends to the injured workman a report form which he is required to fill out and return to the Board. This is known as Form 6. It also sends to the doctor a report form which he is required to fill out and return. This is known as Form 8.

The Board informs me that once those completed forms have been received by it, in the very great majority of the cases, the claim is dealt with by the claims department and, if the injury is compensable, a cheque for the first compensation payment is forwarded to the workman within two days thereafter.

In the case of the larger industries the employers usually have a supply of Form 6 on hand and in those cases the employer completes that form and forwards it in his notice of the accident within the three days prescribed by the Act and the

doctor promptly completes and returns Form 8. There is no delay in the workman receiving his first cheque.

The majority of delays are caused by the failure of the employer to comply with section 114. In a lesser number of cases the doctor is tardy in filling in and returning his report.

I am unable to suggest any improvement in the procedure prescribed by the Act. The Board has an adequate remedy in the penal powers conferred upon it by the Act and informed me that from time to time it has used that remedy with salutary effect.

On occasions a workman suffers an injury which does not at the time seem serious. He does not report it to his employer and remains on the job till quitting time. After he has returned to his home it becomes apparent that the injury may be serious and he consults a doctor. Medical examination may disclose that the injury is sufficiently serious to require the workman to lay off work. The employer has no knowledge of the accident. The doctor, if he is alert, may advise the workman to report it at once but failing that advice the workman may be more or less bewildered and considerable time may elapse before the Board receives any notice of the accident.

Labour unions could do much in educating their members with respect to the operations of the Act and it might serve a useful purpose if they would attach to the printed copies of the collective bargaining agreement which they give to their members a copy of a very informative circular which the Board has prepared entitled "Information for Workmen". It sets out what the workman should do in the event of injury.

A submission was made to me by some of the municipal corporations in the mining area of northern Ontario that the Government should appoint one or more men in the mining area who would be known as "Pension Advocates" to assist injured workmen in that area in filing their claims with the Board. I am not at all impressed by the suggestion. In the first place, on the basis of the information received by me from the Board there is no necessity for appointing such persons. Once the Board has notice of an accident it is most generous in assisting the injured workman in supplying it with the necessary information. The experience of the Board is that only very rarely has the injured workman any difficulty in complying with the requirements of the Board. In the second place advocacy for the injured workman in pressing the claim would justify advocacy for the employer in resisting it. One of the main purposes of the Act is to obviate the need for such advocacy. The Board deals directly with the workman without the intervention of any intermediary and the eminently satisfactory manner in which it discharges its duties according to all those interests which were represented before me convinces me that no intermediary is necessary.

INJURIES AGGRAVATED BY A PRE-EXISTING PHYSICAL CONDITION

Illustration: a workman suffering from diabetes may suffer a very minor injury to a toe due to a weight falling on it. His diabetic condition aggravates that injury and it becomes so serious that the whole foot has to be amputated.

The Board informed me that in the case illustrated it would consider the loss of the foot as having been partly caused by the pre-existing diabetic condition and would award to the workman only fifty per cent of the amount which would normally be awarded to him for the loss of a foot.

In my opinion such a policy is not authorized by the Act.

Section 2 (1) provides that compensation shall be awarded for injury *caused by* accident. In the case illustrated the loss of the foot was not *caused by* the diabetic condition within the meaning of those words in the section. It is true that without the previously existing diabetic condition the workman would not have lost his foot but the real and effective cause of the ultimate injury was the weight falling on the toe, and not the diabetic condition.

All workmen are entitled to the full protection of the Act without any discrimination based on their physical condition. One or two illustrations will show why this must be so.

Two workmen are struck on the head by a falling object. One suffers a fracture of the skull, the other does not. The one who was injured was found to have a thin skull. Obviously he should not be penalized on that account.

The workman with the abnormally sensitive skin is incapacitated by hot water and soda used to wash crockery. The Court of Appeal in England in the case of *Dotzaner v. Strand Palace Hotel Ltd.* (1910) 3 Burroughs Workmen's Compensation Cases, page 387, held that was an accident and the workman should not be penalized because he had tender skin.

The result is no different where the workman is suffering from a pre-existing disease. If the injury aggravates the disease to the point where the workman is incapacitated he is none the less entitled to be fully compensated. In *Lloyd v. Sugg & Co.* (1900) 1.K.B. 481, the Court of Appeal in England held that a workman who suffered an injury to his forearm which was aggravated by a pre-existing gouty condition, was none the less entitled to compensation and that the pre-existing gouty condition was immaterial in determining the amount of the award.

To insure that section 2 (1) shall be given its proper application I recommend that the following be added as subsection 5 of section 2:

> (5) Where an accident causes any injury to a workman and that injury is aggravated by some pre-existing physical condition inherent in the workman at the time of the accident, the workman shall be compensated for the full injurious result save only where the pre-existing physical condition is due to an injury for which the workman is then receiving compensation or was at some earlier date receiving compensation which has been commuted.

CONTINUING INJURY VERSUS SECOND INJURY

On occasions vexed questions arise in the interpretation and application of section 2 (1) of the Act. The following is illustrative.

On March 1, 1942, a workman, in the course of his employment, suffered an injury to his back while lifting a heavy box. The injury was diagnosed as a severe back sprain. He was thereby temporarily totally disabled and received compensation for the duration of the disability, viz. thirty days. His compensation was computed upon his then average earnings. At the end of the thirty days he returned to his job.

On March 1, 1949, while lifting a lighter box, he suffered a severe pain in the same region of his back and was unable to continue on the job. He received medical aid and his then physical disability was traced to the 1942 accident.

Should his compensation be based on his 1942 or his 1949 earnings? The answer to that question depends upon whether, on a proper interpretation and application of section 2 (1), it should be held that the 1949 disability was "caused by" a 1949 "accident" or was it "caused by" the one in 1942. In other words, did the workman suffer two "accidents" or only one?

The decision is important to the workman because his 1949 earnings are considerably higher than in 1942. Certainly he thinks he suffered two "accidents" and it comes as a considerable shock to him when he is told that he suffered only one "accident", namely, the one in 1942.

To get to the root of the problem involved in the case illustrated requires that we should first have a clear conception of what is meant by the words "by accident". Do those words as they appear in the Act mean only accidental causes or do they include accidental results?

I am not in any doubt that they include both. In the case illustrated the physical exertion by the workman was intended and not accidental. The result was not intended and was accidental. He was compensated for the disability in 1942 and the words "by accident" were then interpreted as including accidental result. I see no reason why they should not be similarly interpreted in 1949.

I suggest that in the case of every compensable injury causing temporary disability, the workman, before resuming employment, be required to obtain a medical certificate that the disability caused by the injury has been sufficiently cured as to enable him to resume employment. If that practice is followed, then thereafter the problem whether or not a later disability may have been caused by the earlier accident cannot, or at least should not, arise.

Such a requirement would have further advantageous results. It was submitted to me that frequently an employer in order to save additional compensation in Schedule 2 cases or with an eye on assessment in Schedule 1 cases or in both cases with an eye on his accident record, frequently urges an employee to return to his job before he is sufficiently recovered to resume his employment either on the same job or a lighter job. If my recommendation were to be adopted in such cases the workman could not possibly be thus embarrassed.

Furthermore, an injured worker might be inclined to discount the seriousness of the residue of his disability and return to work before he had sufficiently recovered in order to minimize his loss of earnings. If he should yield to that temptation, he becomes more or less a menace to his fellow employees. My recommendation would remove that possibility.

The corrective measure which I suggest can be covered by a regulation of the Board and does not require any amendment to the Act.

INDUSTRIAL DISEASES

Industrial disease is defined by section 1 (1) (*h*) as meaning:

(i) any of the diseases mentioned in Schedule 3, and

(ii) any other disease peculiar to or characteristic of a particular industrial process, trade or occupation.

The specific diseases named in Schedule 3 and the employments in which they occur are as follows:

SCHEDULE 3

DESCRIPTION OF DISEASE	DESCRIPTION OF PROCESS
Anthrax	Handling of wool, hair, bristles, hides, and skins. (1914, c. 25 effective 1st January, 1915.)
Lead poisoning or its sequelae	Any process involving the use of lead or its preparations or compounds. (1914, c. 25, effective 1st January, 1915.)
Mercury poisoning or its sequelae	Any process involving the use of mercury or its preparations or compounds. (1914, c. 25, effective 1st January, 1915.)
Phosphorus poisoning or its sequelae	Any process involving the use of phosphorus or its preparations or compounds. (1914, c. 25, effective 1st January, 1915.)
Arsenic poisoning or its sequelae	Any process involving the use of arsenic or its preparations or compounds. (1914, c. 25, effective 1st January, 1915.)
Ankylostomiasis	Mining. (1914, c. 25, effective 1st January, 1915.)
Benzol poisoning	Any process involving the use of benzol. (Added by Regulation 94, 13th January, 1925.)
Stone workers' or grinders' phthisis	Quarrying, cutting, crushing, grinding, or polishing of stone, or grinding or polishing of metal. (Added by Regulation 94, 13th January, 1925.)
Silicosis	Mining. (Added by s. 3, c. 42, 8th April, 1926.)
Pneumoconiosis	Quarrying, cutting, crushing, grinding, or polishing of stone, or grinding or polishing of metal. (Added by amendment to Regulation 94, 1st June, 1926.)
Compressed air illness or caisson disease	Any process carried on in compressed air. (Added by Regulation 96, effective 1st January, 1926.)
Chrome poisoning	Any process involving the use of chromium or its compound. (Added by Regulation 99, 20th June, 1929.)
Bursitis	Any process involving continuous rubbing, pressure or vibration of the parts affected. (Added by s. 10, c. 21, 29th March, 1932.)
Dermatitis (venenata)	Any process involving the use or direct contact with acids and alkalies or acids and oils capable of causing dermatitis (venenata). (Added by s. 10, c. 21, 29th March, 1932.)
Infected blisters	Any process involving continuous friction, rubbing or vibration causing blisters or abrasions. (Added by s. 10, c. 21, 29th March, 1932.)
Retinitis due to electro-welding or acetylene welding	(Added by s. 5, c. 82, 25th March, 1937, effective 24th May, 1937.)
Poisoning by carbon bisulphide or its sequelae	Any process involving the use of carbon bisulphide or its preparations or compounds. (Added by s. 5, c. 82, 25th March, 1937, effective 24th May, 1937.)

SCHEDULE 3 (Continued)

DESCRIPTION OF DISEASE	DESCRIPTION OF PROCESS
Carbon dioxide poisoning or its sequelae	Any process involving the evolution of carbon dioxide. (Added by s. 5, c. 82, 25th March, 1937, effective 24th May, 1937.)
Carbon monoxide poisoning or its sequelae	Any process involving the evolution of carbon monoxide (Added by s. 5, c. 82, 25th March, 1937, effective 24th May, 1937.)
Brass or zinc or nickel poisoning or its sequelae	Any process involving the use of nickel or brass or melting or smelting of zinc. (Added by s. 5, c. 82, 25th March, 1937, effective 24th May, 1937.)
Poisoning by nitrous fumes or its sequelae	Any process in which nitrous fumes are evolved. (Added by s. 5, c. 82, 25th March, 1937, effective 24th May, 1937.)
Inflammation of the synovial lining of the wrist joint and tendon sheaths	(Added by s. 5, c. 82, 25th March, 1937, effective 24th May, 1937.)
Poisoning by nitro- and amino-derivatives of benzene, phenol and their homologues (tri-nitrotoluene, dinitrophenol, anilin and others) or the sequelae	Handling any nitro- or amino-derivatives of benzene or phenol or any of their homologues, or any process in the manufacture or involving the use thereof. (Added by Regulation 111, 16th August, 1940; re-enacted by Regulation 16 of O. Reg. 235/44.)
Poisoning by chlorinated hydrocarbons (carbon tetrachloride, trichlorethylene, tetrachlorethane, trichlornaphthalene and others) or the sequelae	Any process in the manufacture or involving the use of these substances. (Added by Regulation 111, 16th August, 1940; re-enacted by Regulation 16 of O. Reg. 235/44.)
Cadmium poisoning	Any process involving the use of cadmium or its preparation or compounds. (Added by Regulation 111, 16th August, 1940; re-enacted by Regulation 16 of O. Reg. 235/44.)
Epitheliomatous cancer or ulceration of the skin due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product, or residue of any of these substances.	Handling or use of tar, pitch, bitumen, mineral oil or paraffin, or any compound, product, or residue or any of these substances. (Added by s. 10, c. 21, 29th March, 1932; amended by s. 5, c. 41, 15th April, 1942.)
Ulceration of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product, or residue of any of these substances.	Handling or use of tar, pitch, bitumen, mineral oil or paraffin or any compound, product, or residue of any of these substances. (Added by s. 5, c. 41, 15th April, 1942.)
Any disease due to exposure to x-rays, radium, or other radioactive substances.	(Added by Reg. 111, 16th August, 1940; amended by Reg. 122, May 3rd, 1943, effective May 11th, 1943; re-enacted by Regulation 16 of O. Reg. 235/44.)
Any respiratory disorder due to the inhalation of materials used in non-offset sprays.	Any process or occupation involving the use of non-offset sprays in the printing industry. (Added by Regulation 16 of O. Reg. 235/44, November 21st, 1944.)

Section 115 of the Act is as follows:

INDUSTRIAL DISEASES

115.—(1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed or his death is caused by an industrial disease and the disease is due to the nature of any employment in which he was engaged, whether under one or more employments, the workman or his dependants shall

be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned or contained in the regulations, unless at the time of entering into the employment he had wilfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) Where the compensation is payable by an employer individually it shall be payable by the employer who last employed the workman in the employment to the nature of which the disease was due.

(3) The workman or his dependants if so required shall furnish the employer mentioned in subsection 2 with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due as such workman or his dependants may possess, and if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4 that employer upon proving that the disease was not contracted while the workman was in his employment shall not be liable to pay compensation.

(4) If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer he may bring such employer before the Board and if the allegation is proved that other employer shall be the employer by whom the compensation shall be paid.

(5) If the disease is of such a nature as to be contracted by a gradual process any other employers who employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer by whom the compensation is payable such contributions as the Board may determine to be just.

(6) The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable and the notice provided for by section 19 shall be given to the employer who last employed the workman in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left the employment.

(7) Where the compensation is payable out of the accident fund the Board shall make such investigation as it deems necessary to ascertain the class or classes against which the compensation should be charged and shall charge or apportion the compensation accordingly.

(8) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of Schedule 3, and the disease contracted is the disease in the first column of the Schedule set opposite to the description of the process the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved, but, except where the Board is satisfied that the disease is not due to any other cause than his employment within Ontario, no compensation shall be payable under this section unless the workman has been a resident of Ontario for the three years next preceding his first disablement.

(12) The Board is authorized to appoint such medical officers as may be required to carry out the provisions of *The Mining Act* and amendments thereto with regard to the examination of employees or applicants for employment and the remuneration and expenses of such officers shall be paid out of the rates imposed for payment of silicosis claims.

(13) Nothing in this Act shall entitle a workman or his dependants to compensation, medical aid or payment of burial expenses for disability or death from silicosis unless the workman has been actually exposed to silica dust in his employment in Ontario for periods amounting in all to at least two years preceding his disablement.

(14) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to compensation under this Part.

(15) The provisions of this section relating to silicosis shall apply *mutatis mutandis* to pneumoconiosis and stone worker's or grinder's phthisis.

It will be observed that when the Act was first passed only the first six diseases which now are named in Schedule 3 were then included in it. The others have been added over the years commencing in 1925, some by amendments made to the Act and others by regulation of the Board.

I question the jurisdiction of the Board to add any diseases to Schedule 3 unless an appropriate amendment is made to the Act specifically empowering the Board to do so.

It has apparently been assumed that the power given to the Board under section 74 was wide enough to empower it to add diseases to Schedule 3 but in my opinion that is not so.

Section 74 (1) is as follows:

74.—(1) Subject to the approval of the Lieutenant-Governor in Council, the Board may make such regulations as may be deemed expedient for carrying out the provisions of this Part and to meet cases not specifically provided for by this Part.

Under that section the Board may pass regulations for carrying out the provisions of Part 1. This does not empower the Board to add anything to Part 1. When the Board assumed to add diseases to Schedule 3 it was doing just that.

It is true that section 1 (1) (*h*) defines industrial disease as being both

(i) any of the diseases mentioned in Schedule 3, and

(ii) any other disease peculiar to or characteristic of a particular industrial process, trade or occupation.

Section 74 (1) would doubtless empower the Board to pass a regulation that a certain disease came within the second part of that definition but that is something quite different to passing a regulation adding that disease to Schedule 3.

What I have been saying is not merely a distinction without a difference. Section 115 (8) creates the presumption that where a workman suffers a disease

named in Schedule 3 while employed in the process set opposite that disease in the second column of Schedule 3, the disease is due to the nature of his employment. The presumption is limited to the diseases and employment named in Schedule 3. If the Board has no power to add diseases to Schedule 3—and in my opinion it has not—then the presumption arises where the disease comes within the first part of the definition but not where it comes under the second part.

Section 74 (1) also empowers the Board to pass regulations "to meet cases not specifically provided for by this Part". That is a very wide power but it is intended to be a power to regulate, not to legislate.

The Act is presently defective and to correct the defect I recommend that the following subsection be added to section 115:

> (16) The Board is specifically empowered to pass regulations adding to Schedule 3 any disease, not previously named therein and which is peculiar to or characteristic of a particular industrial process, trade or occupation.

Submissions were made to me that certain diseases not presently included in Schedule 3 should be added thereto and made compensable when the workman contracts the disease while employed in certain types of work. I now proceed to consider those submissions.

Arthritis

Counsel to the Commission called as a witness before me Doctor Wallace Graham. He is a graduate in medicine from the University of Toronto, a Fellow of the Royal College of Physicians in Canada, a member of The Royal College of Physicians and Surgeons in England, an associate professor of medicine at the University of Toronto, a consultant in internal medicine at the Toronto General Hospital and at Sunnybrook Military Hospital, and is a past president of The Canadian Arthritis Association. He is also co-author of Conroy's text-book on arthritis and allied conditions, which is regarded as highly authoritative on the subject. A summary of Doctor Graham's evidence is as follows:

Arthritis means the inflammation of a joint. There are various types of arthritis, and they differ greatly in their cause, their clinical picture and their treatment. In industry there are four important types, viz., infectious, traumatic, osteo and rheumatoid.

Infectious arthritis, as the name implies, is due to an infection by an organism. The workman may be injured and the organism gain entry through the wound. When it becomes manifest, following an injury, the cause is certain, and the treatment likewise certain. Penicillin is administered and a cure effected. It is not a problem.

Traumatic arthritis, as the name also implies, follows a blow on the joint. The joint becomes inflamed and swollen. The effect is limited to the injured joint. In this type the cause and treatment is also certain, and it presents no problem.

Osteo arthritis is caused by minimal stress over a long period of time. It is found on occasions in the wrist of a shoveller, the elbow of a rivetter and the spine of a miner, but it is also found in people whose occupations are not of the labouring type. All of us have some of it after we are fifty.

Rheumatoid arthritis is the problem type. Its basic cause is presently unknown. It is a generalized type, that is, it is not limited to one joint. For the purposes of

my inquiry there are two types of rheumatoid arthritis, which may be described as the rare type and the common type.

The Rare Type.—A workman in apparently good health suffers an injury that involves a joint. Following the injury he develops generalized arthritis. With respect to that type Doctor Graham said:

> Now I am thoroughly prepared to say that these men who develop rheumatoid arthritis following injury probably have some underlying abnormality, but they are well and working, they do not recognize it, and with this abnormality, plus the injury, they get rheumatoid arthritis. The big difficulty is, I cannot say they will develop rheumatoid arthritis if they had not been injured. No one can answer that question.

Doctor Graham has seen sixteen cases since 1946. An authorized text-writer says the percentage of such cases is nineteen out of a thousand.

The Common Type.—A workman has not suffered a recognizable accident. He develops generalized arthritis. Medical science is unable to define the cause. It is known that there are certain precipitating causes, such as infection, exposure to wet and cold, unusual mental stress.

It was submitted to me that miners frequently develop rheumatoid arthritis, and also workmen employed in the manufacture of automobile tires, the latter working in extremes of temperatures. There was no evidence of the incidence of arthritis among workmen employed in any one occupation as compared with others. It is common knowledge that many people who are not engaged in occupations where they are subjected to the precipitating factors of which Doctor Graham spoke, develop rheumatoid arthritis.

It is a promiscuous disease.

My Conclusions.—Arthritis should not be included in Schedule 3. I am not saying that in no cases is it compensable, but it and all the other types of arthritis should be considered on the evidence in each particular case.

Lung Cancer

Doctor William Boyd gave evidence before me on this subject. He is a graduate in medicine of Edinburgh University, a professor of pathology at the University of Toronto, and President of the National Cancer Institute of Canada. He is recognized as a leading authority on cancer.

The cause of cancer is, unfortunately, yet unknown. Medical science has been able to produce cancer of the skin in the experimental animal by the use of tar, and the incidence of skin cancer among workers employed in the handling or use of tar, pitch, bitumen, mineral oil or paraffin is sufficiently high that it is named as an industrial disease in Schedule 3.

Medical science has also been able to produce cancer of the lung in the experimental animal by subjecting the animal to the inhalation of gases from coal tar. The result of those experiments is not convincing, but it suggests that the same result would follow if man is subjected to the same condition.

Statistics are not lacking in support of the theory that lung cancer is likely to develop among humans who inhale concentrated fumes arising from coal tar.

Doctor Boyd quoted from treatises written by medical men who are recognized as being outstanding authorities on this subject. From Japan comes a record of a well-defined group of workers who were exposed to tar fumes and in six years thirty-one of them died from lung cancer. In an article published in the British Medical Journal in 1943 it is said that, "The evidence of statistics for human lung cancer indicates that an abnormal liability to this disease has been observed among workers exposed to coal tar gas".

Doctor Boyd gave most suggestive statistical information computed by himself concerning workers employed at a specific task at the plant of The Consumers' Gas Company in Toronto. Those workers are employed in what is known as Station B of the plant, and they are there exposed, more than workers elsewhere in the plant, to coal tar gas. Doctor Boyd observed concerning them:

First: That the incidence of lung cancer among them is six times greater than among the male population of Ontario of the same age.

Second: That among them lung cancer occurred at an earlier age than in the general population.

Third: That the incidence of gastro-intestinal cancer among those workers was 27.2 per cent, and of lung cancer 45.4 per cent.

Fourth: That tar removed from the pipes on which the men work produced skin cancer when applied to mice.

Relying upon the opinions expressed by other recognized authorities, statistics recorded elsewhere and his own personal experiences and observations, Doctor Boyd gave it as his opinion that it would be reasonable and fair to assume for the purposes of the Act that lung cancer, when occurring in a workman who in the course of his employment is exposed to the inhalation of concentrated fumes of coal tar gas, is due to the nature of that employment.

I therefore recommend that lung cancer (bronchiogenic carcinoma) be added to Schedule 3 and be compensable where the workman is employed in a process by which he is subjected to the inhalation of concentrated gases from coal, tar or pitch.

Hernia

At the public hearings there was considerable discussion concerning compensation for hernia. I have had the benefit of evidence given by Doctor Gallie who is a most outstanding surgeon and whose qualifications to give evidence on the subject of hernia are beyond question.

As a result of his evidence and to put all controversy on this subject at rest, I recommend that the following subsection be added to section 115:

(17) No compensation shall be payable in respect of hernia unless

(*a*) it is clinical hernia of disabling character and of recent primary demonstrability, and

(*b*) the onset thereof is shown to have been immediately preceded by accident; and

(*c*) it is shown that at the time of the occurrence of the accident the workman immediately reported his condition to his employer or ceased work at the time and reported within seventy-two hours of so ceasing work; and

(*d*) an operation to effect a cure is performed within two weeks of the occurrence if such operation is deemed surgically advisable;

provided that in case there has been excusable failure on the part of the workman to comply with the provisions of this section, the Board may pay compensation if it is of the opinion that the claim in justice should be allowed, but no compensation shall be payable for a period greater than seven days prior to the date of an operation to effect a cure or for more than forty-two days thereafter for uncomplicated hernia.

Silicosis

Silicosis is defined by section 1 (1) (*oo*) of the Act as follows:

(*oo*) "Silicosis" shall mean a fibrotic condition of the lungs sufficient to produce a lessened capacity for work, caused by the inhalation of silica dust.

It was first named as a specific disease in Schedule 3, applicable to the mining industry only, by Act of the Legislature in April, 1926. Prior thereto "miners' phthisis" was named in Schedule 3 as an industrial disease applicable to that industry. "Miners' phthisis" was commonly called "miners' consumption". To-day consumption is more commonly called tuberculosis. Tuberculosis of the lungs is not peculiar to miners. It is an infectious disease and many people in other avocations contract it. It was discovered that the type peculiar to miners was a type that was associated with a change in the lung tissue—it became fibrosed—due to the inhalation of silica dust. That changed condition if sufficiently expansive even without any tubercular infection could cause a disability. Without reviewing the history of the legislation dealing with the subject it will suffice to say that eventually "miners' phthisis" was dropped from Schedule 3 and the definition of silicosis extended to its present scope so as to include changed fibrotic condition when complicated by tubercular infection.

Silicosis is peculiar not only to miners but also to workmen engaged in other industries where they are subjected to the inhalation of silica dust. Included in those other industries but not, by any means exhaustive of them, are those in which the process at which workmen are employed consists of quarrying, cutting, crushing, grinding or polishing of stone or the grinding or polishing of metal with the aid of silica. Schedule 3, however, singles out the industries in which those processes are carried on and names two diseases which are peculiar to them. One is called "stone workers' or grinders' phthisis", the other "pneumoconiosis". Both were added to Schedule 3 by regulation of the Board, the former on January 13, 1925 and the latter on June 1, 1926.

Medical dictionaries define phthisis as meaning all pulmonary lesions followed by disorganization of lung tissue or loss of functions of the lungs. Pneumoconiosis is defined as a lung disease caused by the inhalation of dust—not necessarily silica dust. In practice the Board considers silicosis in workmen employed in the industries in which the processes named in the preceding paragraph hereof are followed, as a disease, included in one or other or perhaps both phthisis and pneumoconiosis.

There are, as already stated, still other industries in which silicosis is an environmental disease but they are neither named nor described in Schedule 3.

In my opinion they should be. I will have more to say about that later. Meanwhile I desire to refer to the evidence which was given before me on this subject generally.

Counsel to the Commission called Doctor Andrew R. Riddell as a witness. He is a physician in the Industrial Hygiene Division of the Ontario Department of Health, and a corresponding member of the Committee of Industrial Hygiene, International Labour Office, and is recognized as an outstanding authority on respiratory diseases in industry and especially on silicosis. He is also a member of the Silicosis Referee Board to which I will refer in due course. A summary of his evidence is as follows:

> Basically silicosis is a disease caused by the inhalation of silicon dust and occurs in persons who have had adequate exposure, that is who have breathed that dust for a sufficient length of time. When free silica reaches the lung tissue a fibrous condition develops in the tissue consisting of nodules which are characteristic in form. These nodules may be very small, less than one millimetre in diameter, or they may be moderately large, up to five or six millimetres. They may be few or many. Dust particles larger than five microns rarely reach the lungs. They are stopped in the nose or mouth or the bronchi or trachea and later expelled. A micron is one 2500th part of an inch and the smallest speck we can see without magnification is sixty-five microns in size. This gives some idea of the extreme fineness of the dust which reaches the lung tissue. The particles of silicon which are most active in producing silicosis are under one micron in size and the degree of activity increases inversely with the size of the particle down to about two tenths of a micron.
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> There is a marked variation between individuals in their susceptibility to the disease. Most people, even in quite marked exposure, are singularly resistant to it. On the other hand there are some persons who seem to be peculiarly susceptible to the disease.
>
> The industries in which the workers are subject to the disease are those in which the workers are likely to inhale excessive quantities of silica dust. They include mining, sand blasting, porcelain making, rock grinding, stone cutting, moulding and the grinding of materials which are grimy with sand.
>
> The length of exposure sufficient to cause the disease in its compensable form varies in the different industries and varies also in the individuals. Taking the average worker in the various industries it would appear that miners and quarry workers may develop it in 13 to 20 years; porcelain workers in certain operations in 14 to 20 years; granite cutters in 27 to 29 years; moulders in 28 to 30 years.
>
> A worker may develop a certain degree of silicosis, that is a certain amount of fibrous tissue in his lungs, and, notwithstanding continued exposure, the condition may remain stationary.
>
> The disease occurs in two forms. One is termed simple silicosis, that is the physical state which is marked only by a fibrotic condition of lung tissue. The other is termed complicated silicosis, that is the physical state in which the fibrotic condition is complicated with infection, mainly tuberculosis of the lung.

Simple silicosis may vary in extent from the stage where the number of nodules are few and small to the stage where large areas of the lungs are involved. As the condition progresses continuous nodules, that is nodules close together, tend to become fused and thus larger areas of the lung tissue become fibrosed.

Simple silicosis renders the lung less resistant to tuberculosis. Since tuberculosis is caused by infection it is imperative that a workman suffering from simple silicosis should not be subjected to the danger of such infection. Not only is the silicotic susceptible to tuberculosis but the tuberculant is susceptible to silicosis. Therefore, a person who has tuberculosis or has had it but been cured should never be exposed to the inhalation of silica dust. It is estimated that between sixty and seventy per cent of silicotics die from tuberculosis. The complicated form is called in medical parlance tuberculo-silicosis and is difficult to cure. It is not amenable to the treatment prescribed for simple tuberculosis.

Looking at the disease from the standpoint of compensability, it is plain that a workman who has simple silicosis may suffer no disability or a disability ranging from small partial disability to total disability. The worker who develops complicated silicosis suffers total disability; he cannot do any work.

This leads me to the method of diagnosis and the method of determining the degree of disability. Again I refer to Dr. Riddell's evidence.

The disease is diagnosed principally by an x-ray examination of the chest and lungs. Where the disease is present the nodules produce a characteristic shadow in the x-ray films. It requires some considerable experience by the x-ray technician to be able to distinguish the shadow thus caused from shadows caused by other conditions in the lung, for example lung cancer, miliary tuberculosis, fungus infections and certain heart conditions. The information gained by the x-ray examination is supplemented by a general physical examination and by the history of exposure.

The workman learns that he has or appears to have silicosis on an examination by his own or a plant physician, or on an examination as required by *The Mining Act* to which reference will be made later. If and when he files a claim for compensation the claim is screened by the claims department to determine whether or not it comes within the non-medical requirements of the Act, that is to say, whether the workman has had a sufficient length of exposure within Ontario to entitle him, if disabled, to compensation. If it does then the claim is passed to the Referee Board.

The Referee Board is comprised of three medical men of whom Doctor Riddell is one. The members of the Board reside in Toronto but they make periodic visits into the mining areas and there the miners whose claims have reached the Referee Board are examined by that Board. Workers from other parts of the Province come to Toronto for examination.

The examination conducted by the members of the Referee Board is most thorough. If they are in doubt on the first examination they keep the workman under further observation and conduct further examinations until they are certain in their combined opinion. It is not a particularly difficult matter to determine

whether or not the worker has complicated silicosis. If he has he is regarded as totally disabled. It is a much more difficult matter to assess the degree of disability in cases of simple silicosis. The disease is not compensable unless there is "a fibrotic condition of the lungs sufficient to produce a lessened capacity for work".

The workman who is totally disabled commences receiving his total disability pension payments and comes under the care of his own physician or the public health authorities.

The workman who is suffering only partial disability is treated differently. He too commences receiving his pension payments but he is examined at the expiration of intervals of a year or less by the Referee Board to determine whether or not the disease is arrested or is progressing. If and as it progresses and the degree of his disability increases of course his pension is increased.

When it is discovered that a workman has silicosis, whether compensable or not, he is advised to change his job and get away from further exposure. Some follow that advice, others do not. There is no compulsion exercised over them. Those who return to the job usually do so because they feel they are too old to learn another type of work. This applies not so much among miners, but among other artisans such as moulders and stone cutters. Those who have compensable silicosis and who choose not to return to their former jobs have the facilities of the Board's rehabilitation service available to them. That service assists them to overcome their disability by learning new types of work.

During the course of Doctor Riddell's evidence the question of the effect of silicosis on the other organs of the body was discussed. This discussion developed because of submissions made in some of the briefs and orally before me that silicosis involves other organs than the lungs. I cannot do better than quote the following from his evidence:

By the Commissioner:

Q. Is there some relationship between the physical condition produced in the lungs, which you call silicosis, and the physical condition that you might find in other organs of the body; is there any relationship between the two; does one cause the other or accelerate the other?

A. For practical purposes, no. It is the lungs that are damaged, not the other organs.

Q. Is the damage to the lung in the way you have been describing it, and which I think I understand, reflected in any way in the functions or appearance of any other organs.

A. No, no; except when you are dealing with a combined condition, you are dealing with toxins which are poured out, with tubercle-bacillus, for example, and you have a general damage because of the toxins which are produced.

. . . . . .

By Counsel:

Q. What about the heart?

A. There is no direct effect on the heart from silicosis, except in cases where the fibrous tissue is very extensive and where a strain is put on the right

side of the heart to circulate the blood through the lungs, because it is the right side of the heart that circulates the blood through the lungs. Now in these cases you can get changes by electrocardiagram, and so on, which indicates the part of the heart which is affected. There is no general effect on the heart except in these extreme cases. Certain persons with silicosis in the later stages do die from failure of the right heart, but a death of that nature is ascribed to silicosis. There is not a general effect. There is no effect as far as can be determined on the general vascular system, no changes in the arteries, except the capillary of the lung. There is nothing to warrant the assumption that a person with silicosis is more liable to coronary thrombosis, for example; it is quite an exception. As a matter of fact it is not nearly as common in these people as it is in persons like you or me. There is much more coronary disease in our group than in the group of persons who are working with silica. So that there is no reason to feel that the heart is affected, except as I have stated, by the presence of silica.

Q. What about the other parts, other organs?

A. Well, I suppose one might name them as they suggest themselves to you. The cardio-vascular system, there is nothing to suggest any change, or the genito-urinary system, there is nothing to suggest anything - - - - The other thing that might be suggested is whether it affects the nervous system. There is no evidence of any direct effect. A person with silicosis is not more liable to become insane than anyone else, and so on.

There is no cure for silicosis. Once the nodules form in the lung they remain there and have a tendency to increase in size and number even though the workman remains away from further exposure. The treatment is really the treatment of symptoms and to guard as far as possible against infection by the tubercular germ.

The subject of prevention was thoroughly explored during the public hearings before me. Even to the person who never before heard of this disease and the cause of it, it would seem plain as a result of what I have already said that the elimination of all silica dust or the application of some method to prevent its inhalation in the industries to which I have referred would be a complete preventative. Various measures have been adopted to reduce the dust to a minimum. These include in the mining industry a mechanism by which water is emitted at or near the point of drilling tools and exhaust fans are employed to exhaust the dust from the mines whether caused by drilling or blasting. In the other industries comparable methods are, or should be, used. In the mining industry an additional method of prevention is used. I need only mention it. It consists of the application of aluminum powder to silica dust. The theory prevails and has considerable support that if the particles of silicon are coated with aluminum powder these particles are not liable to cause silicosis.

In addition to the foregoing in the mining industry there is a condition of employment which unquestionably constitutes a measure of prevention. Section 155 of *The Mining Act*, 1937, R.S.O. Chapter 47, provides as follows:

> 155.—(1) Every workman employed underground in any mine shall be examined by a medical officer appointed under the provisions of *The Workmen's Compensation Act* relating to silicosis at least once in every

twelve months, and every applicant for underground work to whom the certificate mentioned in subsection 2 has not been issued shall be so examined.

(2) If the medical officer finds upon examination that the workman is free from diseases of the respiratory organs and fit for work underground, he shall certify in the prescribed form that such is the case and shall deliver the same to the workman.

(3) Every such certificate shall remain in force for not more than twelve months from the date of issue, and if so required by the manager or superintendent of the mine in which the workman is employed, it shall be delivered to and remain in the custody of such manager or superintendent during the period of the workman's employment, and shall be returned to him on his being discharged from or leaving the same.

(4) A like certificate shall be required in the case of a workman engaged in any ore or rock-crushing operation at the surface of the mine except where the ore or rock is crushed in water or a chemical solution and is kept constantly in a moistened or wet condition.

(5) Except as provided in subsection 4 a workman as to whom such a certificate is not in force shall not be employed in underground work in any mine or in ore or rock-crushing operations at the surface of any mine.

(6) The Chief Inspector may exempt from the foregoing provisions of this section such mines as do not contain silica in quantity likely to produce silicosis, or which for any other good and sufficient reason the said Chief Inspector deems should be exempt, nor shall such provisions apply to workmen employed underground for a less period than fifty hours in any one calendar month.

(7) The Lieutenant-Governor in Council may make regulations prescribing the nature of the medical examination to be made and the form of certificate to be issued under the foregoing provisions of this section and generally for the better carrying out of the requirements of this section.

There are some employers, in industries other than mining, in which the hazard of silica dust is present, who, though not required by law to provide any pre-employment or periodic examinations do so voluntarily.

As to the advisability of making pre-employment and periodic examinations compulsory in the other industries where the workman is exposed to silica dust I let Dr. Riddell speak:

Q. Now Doctor Riddell, you were saying in connection with foundries or other industries in which there is dust exposure, there is no statutory pre-employment or periodic examination, but nevertheless when cases are discovered they come into the hands of the Referee Board; is that right?

A. Correct.

Q. And I suppose by the time you get these claims they are further advanced than cases arising in the mining areas?

A. Yes, in persons from the foundry industries the age average is somewhere in the fifties by the time he comes and he may have had anywhere up to forty years exposure and generally about 58 per cent to 60 per cent of the cases anyway are disabled.

Q. And I think you said that in the foundry industry the average adequate exposure was a great many more years than in other industries.

A. Yes.

. . . . . .

Q. You have been over your files, and you have files of all the active cases, have you not?

A. Yes.

Q. I understand you made a review of those two or three months ago?

A. I made a review of the living silicotics in the mining industry.

Q. In the mining industry alone; and what did you discover from that?

A. I discovered various things. I discovered a large number of those silicotics have worked in other parts of the world where there was exposure before they came to work in the mines here, and I think the important discovery is that out of some 480 cases there were only 25 who had entered the mining industry since 1928.

Q. And developed silicosis?

A. And developed silicosis. That suggests that the methods that are being used are effective; but it doesn't prove it; it just suggests it.

. . . . . .

Q. Do you approve of it? (i.e. pre-employment and periodic examinations)

A. Why certainly.

Q. To the extent that you would recommend that it be done in other industries?

A. I think it should be done everywhere where people are exposed to silica dust.

It has seemed to me that what I have thus far said was necessary before passing to a consideration of submissions which were made to me on behalf of workmen in the industries where the disease arises, and before making any recommendations.

The following submissions were made on behalf of workmen employed in the mining industry:

First: That a special board including labour representatives be established to review and investigate all silicosis claims.

That submission was based on the premise that under the provisions of the Act difficulties have been encountered in establishing silicosis claims. There probably have been cases in which a workman has not succeeded in establishing a silicosis claim but that has not been due to any defect or weakness in the Act. Under section 115 (8) once the workman is found to have silicosis it is presumed that the disease is due to the nature of his employment. Therefore no difficulty can arise on that phase of his claim. The difficulties that have arisen have been due to the fact that the Referee Board has either rejected the claim or has assessed the degree of disability at a lesser degree than satisfied the workman. That is not the fault of the Act, but is a criticism of the Referee Board, or a criticism of the Workmen's Compensation Board for having acted upon the report of the Referee Board.

In my opinion the present system of dealing with claims based on alleged compensable silicosis is entirely adequate. The presence of compensable silicosis can only be determined by authorities who are experts on the subject, and it would be utter folly to give either management or labour any voice in determining that question.

Second: That in any industry where silica dust is present the following diseases should be considered as industrial diseases, namely, heart disease in any form, any disease of the respiratory system and diseases of the circulatory system.

In support of that submission reference was made to certain written opinions expressed by medical men in the United States, that silicosis had an adverse affect on the functioning of other organs of the body besides the lungs. I have read those opinions with care, and there is some conflict between them and the opinion expressed by Doctor Riddell before me. I do not think I should reject Doctor Riddell's opinion and accept in its stead the opinion of another expert whom I have neither seen nor heard. I told those who asked me to do so that they were at liberty to call before me any medical witnesses whom they thought might support those written opinions, and that the fees of those witnesses would be borne by the Commission provided, of course, that they were reasonable. None were called. I was favourably impressed with the evidence of Doctor Riddell and I must accept it. On the basis of his evidence there is no relation between silicosis and those other diseases which it was submitted should be regarded as industrial diseases. Those other diseases are not peculiar to industries in which there is silica dust, and there is no evidence that any greater proportion of workmen in those industries than in other industries suffer from them.

Third: That every reasonably possible mechanical device be employed to protect workmen from the inhalation of silica dust.

I heartily endorse that submission, but it is impossible for me to specify the devices. They would vary as the work and the environment in which it is performed would vary.

Representatives of the stove manufacturing industry made certain criticisms and submissions and I now deal with them.

The stove manufacturing industry in Ontario employed the Industrial Hygiene Foundation of America to conduct a physical survey of the industry's foundries in Ontario to assess the silicosis hazard to workmen employed therein. That Foundation in its report stated that the conditions in the Ontario foundries were compar-

able with conditions in foundries of stove manufacturers in the United States. Being comparable, one would expect to find the incidence of silicosis here and there also comparable. However, on the basis of compensation awarded here and there the incidence of silicosis in Ontario foundries is considerably higher than in the United States. Assuming for the moment that the physical conditions here and there are the same, the difference in the incidences as reflected in the number of compensated cases must be attributable to a more generous view as to disability by the Referee Board in Ontario than by the authorities administering compensation in the United States. I recall to your attention the criticism to which I earlier referred and which was made by representatives of workmen in the mines that the Referee Board was not sufficiently generous in its views of disability caused by silicosis in comparison with the views held by experts in the United States. There, was the criticism that the Referee Board was too strict; here, is the criticism that it is not strict enough. I do not think it is any part of my duty within the scope of my Commission to determine in which direction, if in either, the Board errs, but it may occur to you as it occurs to me, that when both those criticisms are levelled at the Board it might be a reasonable conclusion, based on reasonable probabilities, that the Board has not demonstrably erred in either direction.

The next submission made by the stove manufacturing industry was that there is a danger of an excessively heavy burden of assessment being imposed on that industry for pensions payable to silicotics or their dependents. This excessive burden would be due to two factors which I now consider.

The first is that without any pre-employment examination, workmen from other provinces, who already have some degree of silicosis, might become employed in the industry in Ontario and shortly after the statutory period of two years, as provided by section 115 (13), the disease progress to the stage where it is compensable, and then the burden of paying fall on the industry in Ontario. Unquestionably that danger exists. Pre-employment examinations in the industry will substantially reduce that danger. I will be dealing with such examinations when I come to my recommendations later.

The second so-called danger exists in these circumstances: Silicosis, as an industrial disease in the foundry industry, was not recognized until 1926. By that time there was an accumulation of silicotics in the industry. Many of them had not reached the stage where their disease was compensable. In more recent years they have reached that stage, and others are continuing to reach it each year. Unquestionably the burden has become heavy in recent years, and will continue to be heavy as compared with the period during which the disease was progressing in the workers but had not reached the compensable stage. The Board has advised me that, according to its records, the average total cost, to date, per silicosis claim is $11,000. That includes the cost of medical aid, temporary compensation, capitalization of the claimant's pension and provision for the dependants after his death. It will be thus seen that in those years in which many of the claims mature the additional cost, as compared with other years, will be substantial.

The experience in the foundry industry is no different to the experience in the mining industry, except that in the mining industry silicosis was recognized as an industrial disease earlier than in the other industries. In the mining industry there was the accumulation of maturing cases for which provision had later to be made by that industry.

When silicosis was added as an industrial disease in 1926, applicable to the mining industry the Board established a separate silicosis account into which

assessments on the mining industry were paid and out of which all payments on account of silicosis were made. The policy of the Board is to have the balance to the credit of the silicosis account as nearly as possible equal to the estimated outstanding liability. Severe losses in 1945-6 and a large increase in claims reported resulted in a substantial spread between the amount to the credit of that account and the outstanding liability. To take care of that situation the rate was increased to a point which will gradually remedy it. The balance to the credit of that account at December 31, 1948, was $2,071,931.98 against an estimated liability on claims then currently payable of $3,694,870.30.

The foundry industry refers to the situation which I have been discussing as a danger. The situation is not a danger in the sense that it may or may not develop. It has developed; it is here and will simply have to be met. Had pre-employment and periodic examinations been employed earlier in the foundry industry, as they were in the mining industry, the present load on the foundry industry and all other industries to which the disease is peculiar would undoubtedly be lighter. That, however, is water over the dam. The problem for those industries, as I see it, is to provide every possible means to reduce the hazard in their industries. As the hazard is decreased so will the number of unfortunate victims be lessened.

It was urged upon me that the factor of the age of the worker who becomes disabled by silicosis should be taken into consideration in computing his pension. Silicosis develops slowly—more slowly in workers employed in the foundry industry than in the mining industry. Many workers in the foundry industry reach the age of sixty or sixty-five before the disease disables them. It was argued that they should not then be awarded a pension for life because in a few years thereafter they would, in any event, have to retire from the industry. That is the argument with which I dealt early in this report, and all that I there said need not be here repeated. It will suffice to simply say now that the worker is compensated, not on the basis of his full earnings, but only on seventy-five per cent thereof. What he thereby loses each year is offset by the fact that he receives it for the full balance of his life, and, by the same token, what industry saves by the worker not being compensated on the basis of his full earnings, is offset by the fact that industry pays it for the full balance of the worker's life. The fact that the worker is disabled by industrial disease when close to his retiring age is no different to the case where at the same age he is disabled by accident. In the latter instance he is compensated for life. So should he be in the former.

Next it was argued that many employers in the foundry industry pension their employees at the age of sixty-five. Therefore, where an employee becomes disabled at sixty-five or a few years earlier there is the anomaly of his receiving a pension because he is too old to work and at the same time receiving a pension under *The Workmen's Compensation Act* because he is unable to work. That is not the anomaly that it might, on first thought, seem to be. In my opinion it would be a cruel philosophy by the application of which a worker who had earned a retirement pension by reason of years of service should be deprived of it by industry injuring him. Or, to state it in reverse, it would be cruel to deprive the worker of the compensation to which injury or industrial disease entitled him on the footing that he is entitled to receive a retirement pension. In my opinion he is entitled to both. He has purchased both; the retirement pension by years of service; the pension under the Act by being the victim of the accident or the disease.

I come now to my recommendations under this heading.

First: I recommend that

(*a*) Schedule 3 of the Act be revised

(i) by striking out "stone workers' or grinders' phthisis" and the process described in the second column opposite that disease, and adding after the word "mining" in the column opposite the word "silicosis" the words "and every process where the workman is subjected to the inhalation of silica dust created by the nature of the work performed by him or others", and

(ii) by striking out the processes described in the second column opposite the word "pneumoconiosis" and substituting in their stead the following, viz., "every process where the worker is subjected to the inhalation of dust created by work performed by him or others in, upon or by the aid of stone, sand or metal or derivatives thereof", and

(*b*) the words "and stone worker's or grinder's phthisis" be stricken from section 115 (15).

If these recommendations should be adopted the result will be, first, that instead of having two diseases which the Board considers as one and the same, namely, "stone workers' or grinders' phthisis" and "silicosis", there will be one only, namely, "silicosis", which will apply to both stone workers and grinders, and miners. Second, that industries in which workmen are subject to the hazard of silicosis and pneumoconiosis and which are not now named or described in the schedule will be covered thereby.

Second: If my recommendation *a* above should be adopted, the Legislature may think it advisable to enact legislation outside this Act, comparable to section 155 of *The Mining Act*, and applicable to all those other industries in which the workmen are subjected to the hazard of silicon dust. Since my Commission is limited to an investigation of *The Workmen's Compensation Act*, I do not feel free to make any recommendations in that respect. I think I should only say that, in my opinion, such legislation would receive the approval of both industry and labour.

Other Diseases

It was submitted to me that rheumatism when suffered by a workman employed as a miner or in processes where he has been subjected to extremes of heat or cold or dampness or to repeated changes of temperature, and heart disease when suffered by a firefighter should be included as an industrial disease, and included in Schedule 3.

It is possible that there may be cases in which a workman suffers from one or other of those diseases due to the nature of his employment but to say that in every case where a workman suffers from one or other of those diseases, the presumption created by section 115 (8) should apply, would be grossly unfair.

It is common knowledge that many people in various avocations suffer from those diseases. Where, therefore, a workman claims that he has suffered, either of those diseases due to the nature of his employment, the burden of proving that claim should rest on him.

I recommend that they should not be included in Schedule 3.

ASSESSMENTS

I

An Industry is Assessed as a Unit

I have described this subject as above because of a complaint made to me by one employer that it was being assessed at too high a rate in respect of its clerical staff having regard to assessment rates in the same location on other employers in respect of their clerical staff. The explanation given to me by the Board satisfies me that the complaining employer is not being treated inequitably. I have concluded that I should make a report on this matter because there may be other employers in the same position as this particular one and to show the practice adopted by the Board and that it is quite in harmony with the relevant provisions of the Act.

The complaining employer carries on operations at several locations throughout the Province. Its executive offices where the very great majority of its clerical staff is employed are in the Town of Leaside entirely removed from the hazards existing in operations elsewhere.

This industry, like all other industries, is assessed as a unit, that is to say, for purposes of assessment the various types of occupations are not segregated. The assessment rate is fixed with respect to that industry as one of a class having regard to the accident experience in that class. All industries in the class are treated alike. So much money must be provided by all the industries in that class to meet the accident liability of the class. That could be accomplished in either one of two ways: first, by imposing a higher rate in respect of factory employees and a lower rate in respect of office employees, or, second, by a rate applicable to all employees. The net result to the employer would in either case be the same.

The Board has adopted the second method and I think it is reasonable and practical. In many instances it would be difficult for the Board to determine whether an employee was a factory worker or a clerical worker particularly where his duties were performed partly in the factory and partly in the office. While in the factory he would be subjected to greater hazards than when in the office. In other instances the office might be in the factory building and members of the clerical staff subjected to greater hazards than they would be if the office was located elsewhere. Because of the varied conditions which may exist the method of assessment adopted by the Board is practical and since all industries are treated alike there is no injustice done to any of them.

II

Double Assessments

This problem arises only in the case of those industries included in Schedule 1.

The relevant section of the Act is as follows:

> 5.—(1) Where the place of business or chief place of business of the employer is situate in Ontario and the residence and usual place of employment of the workman are in Ontario and an accident happens while the workman is employed out of Ontario and his employment out of Ontario has lasted less than six months, the workman or his dependants

shall be entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened in Ontario.

(2) Where the place of business or chief place of business of the employer is situate in Ontario and the residence of the workman is out of Ontario but his usual and principal place of employment is in Ontario and an accident happens while the workman is out of Ontario merely for some temporary purpose connected with his employment, the workman or his dependants shall be entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened in Ontario.

(3) Where an accident happens out of Ontario and the employer's place of business or chief place of business is situate out of Ontario and the workman is entitled to compensation under the law of the place where the accident happens, compensation shall not be payable to the workman or his dependants whether he is resident within or without Ontario unless his place of employment is within Ontario and he is at the time of the accident out of Ontario merely for some casual or incidental purpose connected with his employment.

(5) Except as provided in this section no compensation shall be payable under this Part where the accident to the workman happens while he is employed elsewhere than in Ontario.

(6) Compensation payable in respect of an accident happening elsewhere than in Ontario shall, except where the employer has fully contributed to the accident fund in respect of all the wages of workmen in his employ who are engaged in the business or work in which the accident happens, be paid by the employer individually, and the business or work carried on elsewhere than in Ontario by an employer who has not so contributed to the accident fund shall be deemed to be in Schedule 2.

The problem arises in this way. An employer is assessed in Ontario in respect of employees who are temporarily sent by the employer to work out of Ontario. Under *The Workmen's Compensation Act* in the jurisdiction in which those employees are working, even though temporarily, the employer is also assessed in respect of them.

In the event of an accident happening to one of those employees he may elect in which jurisdiction he will claim compensation. If he receives it in one of course he is not entitled to it in the other.

Thus although the employer is subjected to double assessment the injured employee or his dependants obtain only single coverage. This obviously places an unfair burden on the employer.

The matter is complicated by the fact that the Acts of the various provinces are not uniform and the injured workman or his dependants, quite naturally, will elect to claim compensation under the particular Act which contains the more generous provisions. It would be unfair to take that right of election away from the employee or his dependants.

The problem is a most difficult one and I must confess I have been unable to find a completely satisfactory solution. The problem could be solved by reciprocal

arrangements between the provinces. Failing that I can only recommend the following addition to the Act:

> 5.—(7) The Board may make and carry out arrangements with the Workmen's Compensation Board of any other province in Canada to avoid duplication of assessments on the earnings of workmen protected at the same time under the workmen's compensation laws of two or more provinces and make any adjustments in assessments on their employers that the Board deems equitable and may repay any other Workmen's Compensation Board for any payment of compensation made by it under any such arrangement.

Under the authority of a comparable provision in the Acts of some of the other provinces the boards in those other provinces have entered into agreements one with the other. I have set out in Appendix "D" hereto a form of suggested agreement.

There is a definite conflict which I cannot reconcile between section 5 (6) and other provisions in the Act.

Section 2 (1) provides that "in any employment to which this Part applies" the "employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned".

Section 3 makes the employers in the industries in Schedule 2 individually liable to pay the compensation.

Section 4 makes the employers in the industries in Schedule 1 liable to provide the compensation by contributing to the accident fund.

Section 5 states the conditions under which a workman is entitled to compensation where the accident happens out of Ontario, and except where one or another of those conditions obtain no compensation is payable under this Part in respect of such an accident. For example:

> 5.—(1) Where the place of business or chief place of business of the employer is situate in Ontario and the residence and usual place of employment of the workman are in Ontario and an accident happens while the workman is employed out of Ontario and his employment out of Ontario has lasted less than six months, the workman or his dependants shall be entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened in Ontario.

It would seem clear, at this point, that where the workman comes within subsection 1 and his employer's industry is in Schedule 1 that the workman is paid the compensation out of the accident fund.

However, the effect of subsection 6 would appear to be that where the employer has not "fully contributed to the accident fund in respect of all the wages of" his workmen on the job out of Ontario the compensation is not payable out of the accident fund and that particular work "shall be deemed to be" an industry in Schedule 2 and accordingly the employer shall be individually liable to pay the compensation.

It has been submitted by one employer that the effect of subsection 6 is to give the Ontario employer who sends his workmen out of Ontario to a job which lasts no longer than six months a right of election either to contribute to the accident fund or to be individually liable to pay compensation.

I cannot think that such was ever the intention of the Legislature. If that had been intended, it would mean that the Legislature put the Board in the position of having to pay the compensation and run the risk of collecting from the employer. I am certain that the Legislature never intended that result.

That such is not the intention is borne out by sections 90 and 97 of the Act.

Section 90 places the obligation upon every employer to prepare and transmit to the Board within such time as the Board may prescribe "a statement of the amount of the wages earned by *all* his employees during the year then last past or any part thereof specified by the Board and of the amount which he estimates he will expend for wages during the then current year or any part thereof specified by the Board," and by subsection 5 a substantial penalty may be imposed for default in so doing.

On the basis of those returns the Board under section 97 assesses and levies upon the employers in each class sufficient to pay the compensation during the current year.

Then what is the intent and meaning of subsection 6 of section 5? Frankly I do not know. It was not in the draft of the Act as prepared by Chief Justice Meredith nor in the Act as originally passed. It was introduced into the Act in 1915. I have searched in vain among such records of the legislative proceedings as are available for that year for some information that might explain its purpose.

I draw attention to the fact that where an employer whose industry is in Schedule 1 makes default in paying assessments levied upon him and an accident happens in Ontario the compensation is paid out of the accident fund notwithstanding that the employer has not contributed to that fund. I know of no reason why it should not be paid out of that fund where an accident happens out of Ontario in like circumstances.

It has been suggested that subsection 6 is intended to be in the nature of a penalty, that is to say, where the employer has made default in contributing to the accident fund in respect of wages paid on work being performed out of Ontario he is liable to the Board for the full amount of any compensation payable. If that was the intention then the subsection is not appropriately worded. Further, section 107 renders the employer, who refuses or neglects to pay to the Board any assessment, liable, in addition to any other penalty or liability to which he may be subject, to pay to the Board the full amount or capitalized value of the compensation and medical aid payable in respect of an accident to a workman in his employ which happens during the period of such default.

I can only report that subsection 6 is in conflict with other sections of the Act and, as presently advised, I do not think it serves any purpose except to confuse.

INCREASED COMPENSATION IN RESPECT OF PAST ACCIDENTS

A reference to the final report submitted by Chief Justice Meredith discloses that in the discussions before him two plans were put forward by which compensation payments to an injured worker over the years would be provided. The one was the current cost plan, under which assessments would be made only for the amounts required to meet the payments of compensation which fell due during the year next preceding that in which the assessments would be made with an added percentage to provide a reserve fund to meet deficiencies in the accident fund in the event of an unusual catastrophe or a depression in trade but no assessment would be made beyond that to meet the deferred payments of compensation. The other was the once and for all plan by which the employer would be required to pay the present capitalized value of the deferred compensation payments. In his report the Chief Justice reviewed the submissions made to him with respect to both plans and stated his conclusions thus:

> I have, therefore, concluded that the Act should not lay down any hard and fast rule as to the amount which shall be raised to provide a reserve fund, and that it is better to leave that to be determined by the Board, which is to have the collection and administration of the accident fund as experience and further investigations may dictate. I have therefore made provision in the draft bill to that end, by making it "the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened" (sec. 70), and by authorizing the Lieutenant-Governor in Council, if in his opinion the Board has not performed such duty to require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund (sec. 90) and these provisions I deem essential to the safety and adequacy of the scheme of compensation for which the draft bill provides.

The Legislature adopted the recommendation of the Chief Justice and section 70 of his draft bill became section 71 of the original Act.

When Mr. Justice Middleton was executing his Commission, those persons representing the workmen before him submitted that the amounts of compensation as provided for by the Act as it then stood should be increased and that "the increased compensation under the Act, if it should be amended, should apply to all payments accruing after the going into effect of the amendment, whether the accident happened before or after the amendment, and whether the award of compensation has been made or should thereafter be made" but did not suggest that "the amendment shall entitle any person to claim any additional compensation for any period prior to the making of the amendment".

Dealing with that submission Mr. Justice Middleton said:

> The increase suggested with reference to accidents that already have happened would be a complete departure from the scheme of the Act,

which is that the industry as it existed at the date of the accident should bear the entire financial burden resulting from the accident. The increase, if granted, would cast upon the industries of to-day a substantial share of the financial burden resulting from accidents in past years.

I have to report that the Legislature from time to time has departed from the scheme of the Act as originally laid down by Chief Justice Meredith. Indeed it had done so before Mr. Justice Middleton made his report and it has done so since.

The progressive increases in compensatory pensions in cases where death resulted from the injury are shown by the following tables:

I. Where the widow or an invalid husband is the sole dependant.

Year of the Legislation	Monthly Payment	In any Event not to Exceed
1914 (Original Act)	$20	55 per cent of average earnings
1919	$30	55 per cent of average earnings
1920	Lump sum of $100 and $40 monthly	66⅔ per cent of average earnings
1943	Lump sum of $100 and $45 monthly	66⅔ per cent of average earnings
1947	Lump sum of $100 and $50 monthly	66⅔ per cent of average earnings

II. Where the dependants are a widow or an invalid husband and one or more children.

Year of the Legislation	Monthly Payment	In any Event not to Exceed
1914 (Original Act)	$20 with an additional payment of $5 for each child under the age of 16 years not exceeding in the whole $40	55 per cent of average earnings
1917	The payment of $5 for each child was increased to $10 upon the death of the widow or invalid husband	55 per cent of average earnings
1919	$30 with an additional monthly payment of $7.50 for each child under the age of 16 years not exceeding in the whole $60	55 per cent of average earnings
1920	Lump sum of $100 to the widow and $40 with an additional $10 for each child under the age of 16 years (no increase on death of widow or invalid husband) and no limitation of the whole	66⅔ per cent of average earnings
1922	Same as in 1920 except that payment for each child increased to $15 on death of widow or invalid husband	66⅔ per cent of average earnings
1943	Same as 1922 except payment of $40 increased to $45	66⅔ per cent of average earnings
1947	Payment of $45 increased to $50. Payment for each child increased from $10 to $12 and on death of widow or invalid husband from $15 to $20	66⅔ per cent of average earnings
1949	Same as 1947 but a limitation on the whole of $100	75 per cent of average earnings

III. Where the dependants are children.

Year of the Legislation	Monthly Payment	In any Event not to Exceed
1914 (Original Act)	$10 to each child under the age of 16 years not exceeding in the whole $40	55 per cent of average earnings
1920	$15 to each child under the age of 16 years and the limitation of $40 repealed	66⅔ per cent of average earnings
1947	$20 to each child under the age of 16 years	66⅔ per cent of average earnings
1948	Same as 1947 but a limitation on the whole of $100	75 per cent of average earnings

IV. Where the dependants are persons other than a widow or invalid husband or children.

Year of the Legislation	Monthly Payment	In any Event not to Exceed
1914 (Original Act)	A sum reasonable and proportionate to their pecuniary loss to be determined by the Board but not exceeding $40 monthly	55 per cent of average earnings
1915	The monthly sum to the parent or parents not to exceed $20 and not exceeding in the whole $30	55 per cent of average earnings
1920	A sum reasonable and proportionate to their pecuniary loss, limitations as to payment to parents and limitations as to whole repealed	66⅔ per cent of average earnings
1949	Same as 1920 but not to exceed in the whole $100 per month	75 per cent of average earnings

The earliest legislation by way of amendment to the Act which provided that increases in the amount of compensation payable under the Act would apply to past accidents is contained in the amending Act of 1920, 10-11 George V, Chapter 43. Section 12 thereof is as follows:

> The increases in the amount of compensation payable under *The Workmen's Compensation Act* in cases of injury resulting in death shall apply to all pension payments accruing after the coming into effect of this Act whether the accident happened before or after that date and whether the award of compensation has been heretofore or is hereafter made but nothing in this section contained shall entitle any person to claim additional compensation for any period prior to the coming into effect of this Act.

The Legislature having enacted section 12 of the 1920 Act had to provide the Board with the money with which to pay the increased benefits in respect of accidents which had previously happened. There were only two sources from which that money could come, the employers or the Consolidated Revenue Fund of the Province. The Legislature put that burden on the employers by section 14 of that amending Act (now section 33) which is as follows:

> The additional moneys necessary to provide for increases of compensation in respect to accidents previously happening may be levied and collected by the Board from the employers either now, previously or hereafter carrying on industries under Part 1 . . .

In 1948 the Act was further amended by 9 George VI, Chapter 99. Section 35 (3) provided that:

35.—(3) The increases in the amount of compensation payable under *The Workmen's Compensation Act* in cases of injury resulting in death shall apply to all pension payments accruing after the coming into effect of this section, whether the accident happened before or happens after that date, and whether the award of compensation was made before or is made after that date, but nothing in this section shall entitle any person to claim additional compensation for any period prior to the coming into effect of this section.

It will be observed that the wording of section 35 (3) is almost identical with the wording of section 12 of the 1920 Act.

Let it be well understood that I am not in any way critical of the increases in benefits which, from time to time, were provided by the several amendments to which I have referred, nor that they were made applicable to past accidents. The Legislature keeping its ear attuned to public opinion, no doubt felt that those increased benefits were justified and that they should be applicable regardless of the date of the accident. Social and economic conditions change and with those changes public opinion also changes, and the function of a law-making body is to keep pace with public opinion, being neither too far ahead nor too far behind it.

In my very respectful opinion, however, it was error to provide that the additional moneys necessary to provide for the increases in respect of past accidents should be levied and collected from the employers. Such a provision was entirely contrary to the scheme of the Act and violated one of its fundamental principles.

The compensation for which the Act provides must be regarded for what it is and has always been intended to be, namely, a debt owing by industry to the injured workman or his dependants. It is proper to measure that debt at the time of the accident by whatever standard the law then specifies. When the debt is thus measured or evaluated and that measure is paid, industry should thereby be fully released. If, in the course of time, due to changes in our social thinking, or to changed economic conditions, it should be concluded that the standard of measurement should be altered, the debt should not be resurrected and re-measured by some new standard. There should be finality to it. Without such finality industry can never know what its liabilities are. The ownership of industry is constantly changing. The shareholders of an industry in 1950 may be entirely different persons from the shareholders in 1940. In my respectful opinion it is unfair to visit on the shareholders of 1950 a debt created in 1940, and which by the law of the land as it stood in 1940 was completely satisfied. The inequity does not end there. When the amount of compensation in respect of past accidents is increased the assessments to provide that increased compensation are levied on the class in which the industry in which the workman was employed at the date of the accident was placed. The firm by whom the workman was employed may no longer be in that class. Indeed it may have passed out of existence and in that event the industries within the class are called upon to pay a debt for which they were in no way responsible. Other industries in the meantime may have come into existence and be in the class with the same result.

The main reason advanced for increasing pensions which have been awarded in respect of past accidents is that due to changed economic conditions they are found to be inadequate. If the workman or his dependants are thus adversely affected by changed economic conditions and require assistance, the burden of providing such assistance should be borne by society as a whole and not by one

group of society, in this case, industry. Industry discharged its debt by the standard which the law prescribed when the accident happened and the amount which was then paid was considered adequate. It is the lessening of the purchase value of our currency and the consequent increase in the cost of living that later made it inadequate. That is a condition of general application. It applies to all persons who for any reason are in a position of having to live on an income fixed in past years. The dependants of persons who, in their lifetime, were never associated with industry are similarly affected. These, if they require assistance, receive it from the state. Since the injured workman or his dependants are in the same position and for the same cause I see no reason why they should be treated differently. Specifically I think it is discriminatory to place the burden of assisting one group on the state and the other on industry alone.

Social thinking changes with the years, and, as I have earlier observed, our social thinking with respect to the position of the workman in industry has substantially changed even since this Act was first passed. Social legislation, which is the product of our social thinking, can alter present conditions or provide for the future, but it can never recreate the past into that form or standard which we may think it should have had. The generation which is responsible for social legislation, or continues to endorse it, should bear the cost incidental thereto.

Section 33 (1) of the Act says that "the additional moneys . . . *may* be levied and collected by the Board from the employers . . . ". In my most respectful opinion, what the Board is thereby authorized to do is incapable of performance. It is authorized to levy and collect those moneys in the manner which it deems "most in accordance with the general principles and provisions of this Act". For the reasons which I earlier stated, to levy and collect them from the employers is neither more nor less in accordance with the general principles and provisions of the Act. It is in direct violation of those principles.

As a result of the 1948 amendment the industries and businesses in Schedule 1 of the Act have been assessed $3,354,716, being the capitalized value of the increases in pensions being made applicable by that amendment to fatal accidents which had previously occurred. To ease that burden the Board assessed 50 per cent thereof in 1948 and 25 per cent in each of the years 1949 and 1950.

Those employers in Schedule 2 who are required to pay the capitalized value of pensions were assessed $487,177 and the other employers in Schedule 2 who are not required to make deposits had their pension liability increased by an estimated $1,000,000.

As a result of the 1948 amendment, the employers covered by the Act therefore paid, or will be required to pay, roughly $4,841,000 which the public should have paid.

For the reasons which, perhaps at too great length, I have attempted to make clear, I recommend that section 33 be deleted from the Act and that in its stead a provision be inserted as a result of which, from the date upon which such a provision shall become operative, the additional moneys necessary to provide for any increase in compensation in respect to accidents which occurred prior to the increase authorized by the Act shall be paid by the Government to the Board out of the Consolidated Revenue Fund.

All that I have said on this subject of course can presently have only a limited application. The increases in pensions awarded in respect of past fatal accident

cases have been partly paid and in 1950 will be completely paid by the employers. It will apply in the future in the event of the Legislature at some future date amending the Act to make increases in pensions in respect of non-fatal accidents applicable to past accidents. Submissions were made to me that the Act should be thus amended.

Workmen who are receiving disability pensions in respect of past accidents complain of two things:

First: That pensions were computed on the basis of their earnings at the time of the accident and that wage rates have substantially increased since that time.

Second: That their pensions were computed on the 55 per cent rate in those cases where the accident occurred prior to June 1, 1920, and at the 66⅔ per cent rate where the accident occurred after that date, and the percentage rate is now 75 per cent.

The Board informs me that pension payments totalling $4,764,045.43 were made in 1949, in Schedule 1 cases. Part of that amount was for pensions in fatal cases, and it is estimated that $2,850,000 was for disability pensions. If all disability pensions in Schedule 1 cases had been computed in 1949 at a 75 per cent rate, it is estimated that the increase in pension payments in respect of pensions which were originally awarded on a 55 per cent basis would have amounted to $38,000 and the increase in respect of pensions which had been awarded on a 66⅔ per cent basis would have amounted to $343,000. In Schedule 2 cases it is estimated that the increases would have amounted to $10,000 and $72,000 respectively.

There is undoubtedly some merit in the argument advanced by workmen who are in receipt of disability pensions, that if circumstances justified making increases in pensions in respect of fatal accidents applicable to past accidents, those same circumstances justify making increases in pensions in non-fatal accident cases applicable to past accidents.

In view of the scope of my Commission it would be presumptuous and gratuitous for me to make any recommendations on that subject, save the following, namely, that if the Legislature at some future date should decide, in its wisdom, to make increases in pensions in non-fatal cases applicable to past accidents, such legislation, because it would be purely social, should not be woven into the general framework of Part 1 of the Act.

It may be serviceable to point out that Sir William Meredith in his report recommended that the Government should annually pay out of the Consolidated Revenue Fund some amount toward the cost of administering the Act. In that connection he said:

> I have not ventured to suggest what this contribution should be but, in my judgment, it should be a substantial one. The effect of the proposed law will be to relieve the community from the burden of maintaining injured workmen and their dependants in cases in which under the operation of the existing law they are without remedy, and by the transfer from the courts to the Board of the determination of claims for compensation which will lessen very much the cost of the administration of justice.

Section 78 of the Act provides that:

> 78. To assist in defraying the expenses incurred in the administration of this Part (Part I) there shall be paid to the Board out of the Consolidated Revenue Fund such annual sum not exceeding $100,000 as the Lieutenant-Governor in Council may direct.

From 1914 to 1922 inclusive the Government paid to the Board in each of those years the sums following:

1914	$ 22,327.62
1915	8,172.38
1916	25,000.00
1917	100,000.00
1918	100,000.00
1919	100,000.00
1920	99,581.13
1921	98,338.59
1922	98,855.56
Total	$652,275.28

Since 1922 nothing has been paid to the Board by the Government. The result has been that since 1922 the full cost of administration of the Act has been paid by the industries and businesses covered by the Act and the public has paid nothing on that account except to the extent that those industries and businesses may have succeeded in recouping themselves by adding to the selling price of the products which they produced or the services which they provided.

APPEALS FROM THE BOARD

It was submitted to me in one brief only that there should be a limited right of appeal to the courts from decisions of the Board. That submission was made not by or on behalf of either employers or workmen.

Labour and management disagreed on other matters but they were unanimous on this, namely, that there should not be even a limited right of appeal to the courts. The Act has always prohibited any appeals to the courts and when, after thirty-five years' experience in its operations, these two groups, being the ones most vitally interested in its operations, are unanimous on this question, it would be folly to even think of making the suggested change.

I received some letters from individuals complaining of decisions by the Board and submitting that the Act had improperly deprived them of their "inalienable democratic right" to have recourse to the courts. I am not in any doubt that those same individuals would not be such valiant defenders of that "inalienable democratic right" if the Board's decision had been in their favour and their employers were seeking to exercise that right. Neither am I in any doubt that if those individuals had recourse to the courts against the decisions of the Board and the courts sustained those decisions, they would still think that justice had not been done.

I therefore recommend no change in this feature of the Act.

THIRD PARTY LIABILITY

It will be a convenience, if, in reporting upon the submissions which were made to me under this heading, I first quote certain sections of the Act:

> 8.—(1) Where an accident arising out of and in the course of his employment happens to a workman under such circumstances as entitle him or his dependants to an action against some person other than his employer the workman or his dependants if entitled to compensation under this Part may claim such compensation or may bring such action.
>
> (2) If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependants are entitled under this Part the difference between the amount recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependants.
>
> (3) If the workman or his dependants elect to claim compensation under this Part the employer, if he is individually liable to pay it, and the Board if the compensation is payable out of the accident fund shall be subrogated to the rights of the workman or his dependants and may maintain an action in his or their names or in the name of the Board against the person against whom the action lies and any sum recovered from him by the Board shall form part of the accident fund.
>
> (4) The election shall be made and notice of it shall be given within the time and in the manner provided by section 6.
>
> (5) No employer in Schedule 1 and no workman of an employer in Schedule 1 or dependant of such workman shall have a right of action against any employer in Schedule 1 or against any workman of any such employer in any case within the provisions of subsection 1, but in any case where it appears to the satisfaction of the Board that a workman of an employer in any class or group in Schedule 1 is injured or killed owing to the negligence of an employer or the workman of an employer in another class or group in Schedule 1, the Board may direct that the compensation and medical aid awarded in any such case shall be charged against the class or group to which such last-mentioned employer belongs.
>
> (6) In any action brought by a workman of an employer in Schedule 1 or dependant of such workman in any case within the provisions of subsection 1 or maintained by the Board under subsection 3 and one or more of the persons found to be at fault or negligent is the employer of the workman in Schedule 1, or any other employer in Schedule 1, or any workman of any employer in Schedule 1, no damages, contribution or indemnity shall be recoverable for the portion of the loss or damages caused by the fault or negligence of such employer of the workman in Schedule 1, or of any other employer in Schedule 1, or of any workman of any employer in Schedule 1, and the portion of the loss or damages so caused by the fault or negligence of such employer of the workman in Schedule 1, or of any other employer in Schedule 1, or of the workman of

any employer in Schedule 1, shall be determined although such employer or workman is not a party to the action.

(6a) In any action brought by a workman of an employer in Schedule 2 or dependant of such workman in any case within the provisions of subsection 1 or maintained by the employer of the workman under subsection 3 and one or more of the persons found to be at fault or negligent is the employer of the workman in Schedule 2, no damages, contribution or indemnity shall be recoverable for the portion of the loss or damages caused by the fault or negligence of such employer and the portion of the loss or damages so caused by the fault or negligence of such employer shall be determined although such employer is not a party to the action.

6.—(2) Notice of the election, where the compensation under this Part is payable by the employer individually, shall be given to the employer, and where the compensation is payable out of the accident fund to the Board and shall be given in both cases within three months after the happening of the accident, or in case it results in death, within three months after the death or within such longer period as either before or after the expiration of such three months the Board may allow.

An illustration will help to clarify the effect of these provisions, and at the same time point up the matters of which complaint was made.

"A", a street cleaner employed by the City of Toronto, is injured while at work by being struck by a motor vehicle owned and driven in a negligent manner by "B".

Under the Act, "A" is entitled to compensation. The City of Toronto, being an employer in Schedule 2, is individually liable to pay the compensation. "A" also has a right of action against "B". Under subsection 1, "A" may claim the compensation *or* he may sue "B" to recover damages. He must elect which remedy he will pursue (sections 8 (4) and 6 (2)). If he does not elect within the time limited by the Act, he is left to his remedy against "B", subject, however, to the right given him by subsection 2. If he elects to sue "B" and in that action recovers and collects less than the compensation to which he would be entitled under the Act, the City of Toronto must pay him the difference.

If "A" elects to claim compensation under the Act, the City of Toronto may sue "B", either in "A's" name or its own name and recover from "B" the damages which "A" could have recovered if "A", instead of claiming compensation, had sued "B".

There are several defects in section 8 and I now proceed to show what they are by reference to the case illustrated.

First, where "A" elects to claim compensation:

The City of Toronto sues "B". In that action it recovers for two items of "A's" damages, viz., pain and suffering and "A's" full loss of earnings and under the Act is entitled to retain both. Clearly it should not be permitted to retain the money value of "A's" pain and suffering and equally as clearly it should not be permitted to retain more for "A's" loss of earnings than it was required to pay "A" through the Board under the Act.

I was told during the public hearings that the general practice of employers has been to pay over to the workman everything recovered by them in an action

against a third party over and above the amount which the accident had cost them by way of compensation.

One representative of an employer, while stating that such was the practice of his company, objected to the suggestion that the Act should require employers to observe that practice. He stated his argument thus:

> . . . . in any ten cases in which the workman under Schedule 2 is struck by a third party on the highway and is injured, I venture to say it is fair to state that in not more than five of them is the action worth pursuing. The defendant, you will find, in probably half of the cases is judgment proof, and you are only throwing good money after bad to sue him. You may find in the other five cases you do get a certain amount for pain and suffering which is over and above the amount which you have had to pay out in compensation under *The Workmen's Compensation Act*. But I say there is nothing inherently unfair or unjust in allowing the employer to make on the swings what he has otherwise lost on the roundabouts, and it is only right that he should be allowed, if he sees fit, to average out his losses if he can and I am willing to state from my experience that you never break even.

In dismissing that argument I need only say that, in my opinion, it would be clearly unjust for the employer to recoup his losses in some other case at the expense of "A" in the case illustrated. "A's" rights are not to be affected by the employer's unfortunate experience in some other case.

Second, where "A" elects to claim against "B":

It will be observed that by virtue of subsection 1 "A" "may claim such compensation or may bring such action". Then, by virtue of subsection 2, if he brings an action and in that action recovers and collects less than the amount of compensation to which the Act entitles him, the City of Toronto is liable for the difference. What is to be the result if, without bringing an action, he settles with "B" or "B's" insurer? Is he, nevertheless, entitled to claim full compensation under the Act? The Act does not state in terms that he is not thus entitled.

If "A" brings an action and the action is not fought out on the merits in court but "A" under stress of circumstances settles for less than the amount of the compensation even though the amount of the settlement is entirely unfair to "A" having regard to the merits of the claim the City of Toronto is nevertheless liable for the difference. "B" escapes by paying only a portion of the amount which, in justice, he should pay, and the City is unjustly burdened by having to pay a portion of "B's" real liability. Where the action is settled, how much of the money paid in settlement is for loss of earnings and how much for pain and suffering and other items?

To remedy the foregoing defects I recommend the following additions and amendments to section 8.

First, that the following provisions be added thereto:

> (1*a*) Where an accident occurs in the circumstances referred to in subsection 1 of this section, no settlement of the claim which gives rise to the right of action therein referred to shall, except in cases where the amount of the proposed settlement is less than the sum of $300, be made either before or after action brought by the workman or by or on behalf

of his dependants, without the approval of a judge of the Supreme Court of Ontario on an application made to him in Chambers on written notice to the Board. If an action has been brought, the motion shall be made in the action. If no action has been brought, the application shall be by way of originating motion. On such motion the judge shall determine on the material before him whether the proposed settlement is fair and reasonable, having regard to the circumstances of the accident and the injuries of the workman. On such motion, if the settlement is approved, the judge shall find and declare, except in a case where the action is brought under *The Fatal Accidents Act* alone, what part of the total settlement is in respect of the workman's (1) pain and suffering, (2) out-of-pocket expenses, and (3) loss of earnings both present and prospective.

(1*b*) If an action is brought, the plaintiff shall, not later than the date upon which the action is set down for trial, file with the clerk or registrar of the court, as the case may be, a statement setting forth the name and address of the employer by whom the workman was employed at the time of the accident and that the employer, at the date of the accident, was one to whom this Act applied. If the action is tried by a jury, no reference shall be made in the presence of the jury to the fact that the plaintiff is or was or might be entitled to compensation under this Act. The judge in a non-jury trial and the jury in a jury trial shall, except in a case where the action is brought under *The Fatal Accidents Act* alone, in assessing the plaintiff's damages, state what part thereof is in respect of (1) pain and suffering, (2) out-of-pocket expenses, and (3) loss of earnings both present and prospective. If any settlement is proposed during the trial, the same shall not be made unless approved by the trial judge. If the trial judge approves the same he shall, except in a case where the action is brought under *The Fatal Accidents Act* only, with or without notice to the Board, apportion the total amount of the settlement in the same manner as he or a jury would be required under this subsection to do in assessing damages.

Second, that subsections 2 and 3 be amended to read as follows:

(2) If the claim is settled either before or after action is brought or if an action is brought and tried and in either circumstance less is recovered and collected for loss of earnings or in an action brought under *The Fatal Accidents Act* as damages resulting from the death of the workman than the amount of the compensation to which the workman or his dependants are entitled under this Part, the difference between the amount thus recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependants.

(3) If the workman or his dependants elect to claim compensation under this Part, the employer, if he is individually liable to pay it, and the Board if the compensation is payable out of the accident fund, shall be subrogated to the rights of the workman or his dependants and may but shall not be required to maintain an action in his or their names or in the name of the Board against the person against whom the action lies and any sum recovered from such person over and above the compensation payable to the workman or his dependants under this Act and the costs of medical aid and rehabilitation and the costs of the action shall

be paid over to the workman or his dependants, as the case may be, upon their executing a release fully discharging the Board from the obligation of paying him or them any further compensation in addition to the amount already awarded by it to him. If the workman or his dependants upon being requested to execute such release, decline to do so, the full amount recovered in the action shall, where the action is brought by the Board, form part of the accident fund, and, in the case where the action is brought by the employer, may be retained by him.

ABOLITION OF SCHEDULE 2

As I pointed out in my synopsis of the Act the industries in Schedule 1 contribute to the accident fund and in that way collectively pay the compensation, while the industries in Schedule 2 are individually liable. So far as the operations of the Act are concerned that is the only difference between them.

The reasons for applying the collective liability system to the industries in Schedule 1 can have no application to those industries which are included in Schedule 2. There is no danger that any of the industries in Schedule 2 would be financially ruined by accidents happening to their employees. None of those industries are asking that they be transferred to Schedule 1 or that Schedule 2 be eliminated. The employees in the running trades in the railways are content that the railways be left in Schedule 2. Those employees have had the experience of their employers being placed in Schedule 1 under the British Columbia Act and in Schedule 2 under the Act of other provinces and that experience has taught them that they are not in any way adversely affected by the legislation as presently in effect in Ontario and other provinces.

Chief Justice Meredith in his final report said:

> If it had been practical to do so without impairing the efficiency of the collective system I should have preferred to include a larger number of industries in Schedule 2 in order that with the two systems working side by side experience might demonstrate whether the collective system or that of individual liability was preferable, but I have not been able to satisfy myself that the exclusion from Schedule 1 of any considerable number of the industries included in it would not impair the efficiency of the collective system and I have therefore excluded from it only the industries enumerated in Schedule 2.

Thirty-five years' experience has demonstrated that the employees in those industries in Schedule 2 are equally as well treated so far as the operations of the Act are concerned as the employees of the industries in Schedule 1. In the light of that experience and the wishes of the employers in Schedule 2 and the contentment of the great majority of the employees in the industries in Schedule 2, I suggest it would be folly to now begin tampering with the Act by either transferring some industries from Schedule 2 to Schedule 1 or by entirely eliminating Schedule 2 and transferring all its industries to Schedule 1.

If I may judge from certain statements contained in Mr. Justice Middleton's report, the same submissions for the abolition of Schedule 2 were made to him as were made to me. He said:

> The real complaint on the part of the workman is based upon a psychological phenomenon. Where many industries are grouped in one class under Schedule 1, upon an accident happening, the master realizes that because he is one in a thousand he will only have to pay a thousandth part of the compensation. He is entirely sympathetic with the injured man. He realizes that he has been assessed premiums, possibly for years, to take care of an accident if it should happen, and in the result his desire

is that the injured workman shall receive all that can possibly be given him. Everything he reports, says and does is favourable to the workman, and the local doctor is also sympathetic. In the case of the railway or other large concern, while there is undoubtedly sympathy for the injured man, there is a keen and close investigation into the nature and extent of the injury received, and there is a desire to minimize the incapacity of the workman and so to minimize the loss to the company. There is no room for suggestion that the medical men employed by the company are not admirably qualified and thoroughly honest, but everything is viewed from the standpoint of the employer and there is not quite the same sympathetic and generous attitude as in cases where the injured man alone is considered, and the payment is made from an impersonal fund to which the employer contributes an infinitesimal fraction. There is nothing before me to indicate that in cases falling under Schedule 2 the injured man fails to receive all that he is legally and justly entitled to have. I strongly suspect that in cases falling under Schedule 1, the injured man receives more than that to which he is in strictness entitled. This is inevitable, for where one is considering the claim of an injured individual against an impersonal fund the individual is rightly given the benefit of every possible doubt.

If there is anything in this situation calling for a change that which has been suggested will not bring it about. If the two great railway systems on being brought under Schedule 1 should fall into two individual classes, it being regarded as inequitable that they should pool their losses, the situation will in effect remain precisely as it is. If, on the other hand, they should be placed together in one class there is not any ground for supposing that the present efficient vigilance will not continue, and I do not believe that the slightest change would take place.

The "psychological phenomenon" of which Mr. Justice Middleton spoke is not a sufficient justification for interfering with a system which has given such general satisfaction over a period of thirty-five years.

If I were convinced that there would be any justifiable advantage to the workmen and no disadvantage to the employers in those industries now included in Schedule 2 by transferring those industries to Schedule 1, I would recommend the change. I am not so satisfied. Indeed it would be impractical having regard to the difference in the character of the industries in the two groups.

I therefore recommend no change in that feature of the Act.

COMMUTATION OF PERIODICAL PAYMENTS BY EMPLOYERS IN SCHEDULE 2

This subject applies only to the employers in Schedule 2 and involves sections 26, 27 and 28. They are as follows:

> 26.—(1) Where a weekly or other periodical payment is payable by the employer individually and has been continued for not less than six months, the Board may on the application of the employer allow the liability therefor, to be commuted by the payment of a lump sum of such an amount as, if the disability is permanent, would purchase an immediate annuity from a life insurance company approved by the Board, equal to seventy-five per centum of the annual value of the weekly or other periodical payments, and in other cases of such an amount as the Board may deem reasonable.
>
> (2) The sum for which a payment is commuted under subsection 1, shall be paid to the Board and shall be dealt with in the manner provided by section 25.
>
> 27.—(1) Where an employer insured by a contract of insurance of an insurance company or any other underwriter is individually liable to make a weekly or other periodical payment to a workman or his dependants and the payment has continued for more than six months the liability shall, if the Board so directs before the expiration of twelve months from the commencement of the disability of the workman or his death, if the accident resulted in death, be commuted by the payment of a lump sum in accordance with section 26, and the company or underwriter shall pay the lump sum to the Board, and it shall be dealt with in the manner provided by section 25.
>
> (2) This section shall not apply to a contract of insurance entered into before the passing of this Act.
>
> 28. The Board may require an employer who is individually liable to pay the compensation to pay to the Board a sum sufficient to commute in accordance with section 26, any weekly or other periodical payments which are payable by the employer and such sum shall be applied by the Board in the payment of such weekly or other periodical payments as they from time to time become payable, but if the sum paid to the Board is insufficient to meet the whole of such weekly or other periodical payments the employer shall nevertheless be liable to make such of them as fall due after the sum paid to the Board is exhausted, and if the sum paid is more than sufficient for that purpose the excess shall be returned to the employer when the right to compensation comes to an end unless otherwise ordered by the Board.

It will be observed that section 26 permits the employer to apply to the Board to allow the liability of the employer to be commuted, and that sections 27 and 28 authorize the Board to commute the liability and to demand the payment of a lump sum by the insurer under section 27 and by the employer under section 28.

Many employers in Schedule 2 carry indemnity insurance in respect of compensation payable for injuries to their employees. If the employer or his insurer pays to the Board a sum equal only to seventy-five per cent of the annual value of the weekly or other periodical payments, there remains a contingent liability for twenty-five per cent thereof. An employer may want to get rid of that contingent liability and not have it hanging over his head indefinitely.

I know of no reason why, if the employer desires to pay to the Board the full present value of the periodical payments, it should not be permitted to do so. I have discussed the matter with the Board and it has no objection to the amount which the employer may pay under section 26 being increased to one hundred per cent instead of it being restricted to seventy-five.

I therefore recommend that section 26 (1) be amended by inserting after the word "equal" in the fourth last line thereof the word "either" and after the word "value" in the third last line thereof the words "or to the full annual value", so that as amended the subsection will read as follows:

> (1) Where a weekly or other periodical payment is payable by the employer individually and has been continued for not less than six months, the Board may on the application of the employer allow the liability therefor, to be commuted by the payment of a lump sum of such an amount as, if the disability is permanent, would purchase an immediate annuity from a life insurance company approved by the Board, equal either to seventy-five per centum of the annual value or to the full annual value of the weekly or other periodical payments, and in other cases of such an amount as the Board may deem reasonable.

ACCIDENT PREVENTION

Section 116 of the Act is as follows:

116.—(1) The employers in any of the classes for the time being included in Schedule 1 may form themselves into an association for accident prevention and may make rules for that purpose.

(2) If the Board is of opinion that an association so formed sufficiently represents the employers in the industries included in the class, the Board may approve such rules, and when approved by the Board and by the Lieutenant-Governor in Council they shall be binding on all the employers in industries included in the class.

(3) Where an association under the authority of its rules appoints an inspector or an expert for the purpose of accident prevention, the Board may pay the whole or any part of the salary or remuneration of such inspector or expert out of the accident fund or out of that part of it which is at the credit of any one or more of the classes as the Board may deem just.

(4) The Board may in any case where it deems proper make a grant toward the expenses of any such association.

(5) Any moneys paid by the Board under this section shall be charged against the class represented by such association and levied as part of the assessment against such class.

(6) The word "class" in this section shall include sub-class or such part of a class or such number of classes or parts of classes in Schedule 1 as may be approved by the Board.

Under the authority of section 116 (1) eight industrial accident prevention associations have been formed by the employers in industries included in one or more of the classes shown in Schedule 1 of the Act. Each such association has a corporate existence by virtue of the Letters Patent under the Ontario Companies Act by which it was created. The names of those associations, the industries in which they function and the dates of the Letters Patent are as follows:

Name of Association	Industries by Classes	Dates of Letters Patent
Lumbermen's Safety Association	Class 1	February 4, 1915
Ontario Pulp and Paper Makers Safety Association	Class 2	March 11, 1915
Mines Accident Prevention Association of Ontario	Class 5	December 12, 1930
Class 20 Accident Prevention Association of Ontario	Class 20	May 1, 1942
Electrical Employers Association of Ontario	Class 22	December 17, 1914
Construction Safety Association of Ontario	Class 24	July 10, 1929—original February 22, 1938—re-organized

Name of Association	Industries by Classes	Dates of Letters Patent
Ontario Highway Construction Safety Association	Class 21	April 27, 1939
Industrial Accident Prevention Association	Classes 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23	July 17, 1917

The officers and directors of each of those associations are chosen from representatives of employers in the industries included in the class or classes of industries in which the associations function. Each association has a manager and necessary clerical and office help. In three instances the manager is on a part-time basis. Five of the associations employ a staff of inspectors whose duties are to travel around the Province inspecting the plant and operations of the employers and investigating accidents as they occur. The work of these associations is largely educational, that is to say they strive to make the employers and the workmen accident conscious. This educational program is carried out by means of eye-catching circulars and pamphlets supplied to the employers in the hope and expectation that the employers will cause them to be brought to the attention of the workmen by posting them up in advantageous places and by such other means as the individual employer may think most appropriate. Some of the associations attempt to educate the workmen in the hazards of their particular industry and the techniques advisable in guarding against these hazards by moving pictures and illustrated lectures.

The total cost of operating each of those associations is borne by the industries in the class or classes which the association represents. Early in each year each association presents a budget to the Board showing its anticipated expenditures for that year. Those budgets are scrutinized by the Board and if in the opinion of the Board they are reasonable, they are approved. So far as I have been able to ascertain there is usually no controversy between the Board and the associations concerning those budgets. The Board then includes in the assessments levied on the industries represented by the association the amount at which the budget was approved. The Board thus receives from the industries represented by each of the associations the cost of the association's operations and pays the same by way of "grants" to the association. I think the word "grants" is not quite the appropriate word. Actually the Board is merely the medium through which the industries pay the costs of operating their own associations. In two instances, as will later appear, certain industries in recent years made certain payments direct to their respective associations.

The amounts paid to each of those associations in each of the years 1947, 1948 and 1949 are as follows:

Association	Paid by Board			Paid Direct by Employers		
	1947	1948	1949	1947	1948	1949
	$	$	$	$	$	$
Lumbermen's Safety Association	51,830.00	53,273.55	57,228.00	.....	.....	.....
Ontario Pulp & Paper Makers Safety Association	14,870.16	17,001.80	18,565.09	204.00	1,738.21	1,810.39
Mines Accident Prevention Association of Ontario	30,135.00	31,052.80	34,125.00	.....	315.00	470.00
Class 20 Accident Prevention Association	32,000.00	33,495.72	47,350.00	.....	.....	.....

Association	Paid by Board			Paid Direct by Employers		
	1947	1948	1949	1947	1948	1949
†Electrical Employers Association of Ontario...	$ 5,880.00	$ 5,734.82	$ 908.63	.....	.....	.....
*Construction Safety Association of Ontario...	40,000.00	37,598.60	30,125.53	.....	.....	.....
*Ontario Highway Construction Safety Association.....	19,000.00	14,373.64	16,411.88	.....	.....	.....
Industrial Accident Prevention Association..	175,700.00	204,118.09	218,517.29	.....	.....	.....

†The Electrical Employers Association of Ontario had a credit balance of $7,751.30 at the end of 1948 upon which it drew to help cover the cost of operation in 1949.

*The Construction Safety Association of Ontario and the Ontario Highway Construction Safety Association are closely affiliated, and have a common manager. The actual cost of operations in the years 1947, 1948 and 1949 do not tally with the amounts paid by the Board. I am informed that these associations had a credit balance on hand from prior years. The actual cost of operations in these years was as follows:

	1947	1948	1949
	$	$	$
Construction Safety Association of Ontario.....	35,030.91	38,243.89	42,260.38
Ontario Highway Construction Safety Association...	16,459.64	19,169.35	20,283.22

No inspectors are employed by the Mines Accident Prevention Association of Ontario, the Ontario Pulp and Paper Makers Safety Association or the Electrical Employers Association of Ontario.

Safety inspection in the mining industry is carried out by the Ontario Department of Mines.

In the pulp and paper industry, I was informed that, with the exception of a few smaller units, each employer company has one or more "safety directors" or "safety supervisors" in their mills and pulpwood logging operations.

The Electrical Employers Association of Ontario apparently in earlier years employed one or more inspectors but in more recent years has confined its method of accident prevention solely to educational means.

During the public hearings before me the whole subject of accident prevention was thoroughly discussed. The system as authorized by the Act and as it is functioning throughout the Province was severely criticized by the representatives of labour. Certain representatives of management just as vigorously sought to defend the system and the manner in which it operates. Other representatives of management while endorsing the system, complained that it was not functioning properly for various reasons to which I will shortly refer.

Labour's criticism was as follows:

1. The workmen are the victims of accidents in industry and yet they have no voice or representation in the associations whose work is the prevention of accidents.

2. The associations may prescribe rules for accident prevention but there is no means of enforcing compliance with those rules and frequently those rules are not observed.

3. Because of the failure by certain employers to observe such rules as the associations may prescribe and because of the absence of other safety regulations which should be in force and observed, workmen continue to be the victims of accidents which could be prevented and are powerless to prevent them.

Labour submitted that the Act should be amended so as to bring the whole subject of accident prevention under the direct jurisdiction of the Board the same as it is in the provinces of British Columbia and Alberta.

The representatives of management opposed that suggestion and submitted that it was just as vitally interested in accident prevention as was labour; that the very nature of the subject is such that it should be left to management because management is in a better position to administer it than the Board could be; and finally that workmen are always at liberty to make suggestions to employers for any improvement in accident prevention methods and in any event, foremen in industries observe the conditions in which the workmen labour and if hazardous conditions come to their attention, they report the same to the employers, and it is to be assumed that steps are then taken to remedy these conditions.

Several of the associations complained that they were handicapped in properly fulfilling their functions by reason of:

(*a*) lack of sufficient funds;

(*b*) failure of the Board to impose sanctions on employers who flagrantly violated well-recognized rules for safety notwithstanding that the association reported those violations to the Board.

The prevention of accidents in industry is a subject of no less importance than is compensation for injuries sustained as a result of such accidents. It is infinitely more important that, where possible, an accident should be prevented than that it should be permitted to occur and the victim be compensated. It is therefore appropriate that an Act which provides compensation to the victims of industrial accidents should contain provisions dealing with prevention of such accidents.

In my respectful opinion the present provisions of the Act dealing with accident prevention are not adequate and need revision.

Since accident prevention is of common interest to both employers and workmen it would seem logical that they should both actively participate in any organized system the purpose of which is to lessen industrial accidents. As between the two groups, it seems to me that the workmen are much more vitally interested than the employers. If a workman is maimed in an industry, the employer has to pay the compensation but no monetary allowance can ever adequately compensate a workman who has to go through the balance of his life minus an eye, or a hand or some other member.

My first criticism of the present system is that it does not provide any means which will ensure the active participation of labour in the work of accident prevention.

My second criticism is that the relationship between the Board and the associations is much too remote. The Board, it is true, scrutinizes the annual budget of such associations; the managers of the associations, some of them much more

frequently than others, confer with the Board verbally, and on occasions in writing complain about what those managers consider are flagrant violations of safety regulations; but there are too few occasions in which the Board gets its hand on the pulse of the associations to determine the extent to which they are carrying out the work of accident prevention. In saying that, I do not mean to criticize the Board, but I do mean to criticize the system. There is no statutory obligation on any of those associations to report to anyone. Each association was brought into existence on the application of a representative group of employers in one or more classes. They owe no duty to anyone. There is no statutory obligation on them to continue to function and the extent to which they function is their own business. Although it is not likely to happen it is pertinent to observe that if any one of them ceased to function to-morrow there are no provisions in the Act for the carrying on of the important work of accident prevention.

Since those associations are now in existence and functioning I do not recommend their abolition, but in my respectful opinion there should be a much closer relationship between them and the Board than presently exists.

Even if those associations should be functioning at the highest degree of efficiency and under direct supervision of the Board there would still be something lacking in the system. In my respectful opinion any completely organized system of accident prevention requires as part thereof committees of employers and workmen at plant level. Specific duties should be laid down for those committees and they should be required to report periodically to the Board. If the Board is in receipt of such reports, it will be in a position to gauge the effectiveness of the work of the associations. The Board under the British Columbia Act has passed a regulation requiring the setting up of such committees and informed me that it has found them very effective in the work of accident prevention.

In my opinion also any completely organized system for accident prevention requires a code of accident prevention regulations which shall constitute the minimum and for the breach of which adequate penalties may be imposed. I am in grave doubt as to the meaning of section 116 (2) of the Act, that is to say, whether the "rules" there referred to include accident prevention regulations or whether they are limited to "rules" for the internal management of the association.

To overcome what I have stated appear to me to be deficiencies in the Act, I recommend that the following be added thereto:

> 116a.—(1) Notwithstanding anything contained in section 116 the whole subject of accident prevention in all the industries included in Schedule 1, except mining, shall be under the jurisdiction of the Board.
>
> (2) Where, heretofore, any association has been formed under the authority of section 116 (1) and the Board is of the opinion that such association is effectively carrying out the work of accident prevention in the industries represented by that association, it may adopt that association as its agent for the purpose of carrying out such administrative duties as the Board may from time to time prescribe.
>
> 116b.—(1) The Board shall have power,
>
> (*a*) to investigate from time to time employments and places of employment within the Province, and determine what suitable safety devices or other reasonable means or requirements for

the prevention of accidents shall be adopted or followed in any or all employments or places of employment;

(*b*) to determine what suitable devices or other reasonable means or requirements for the prevention of industrial diseases shall be adopted or followed in any or all employments or places of employment;

(*c*) to make rules and regulations, whether of general or special application, and which may apply to both employers and workmen, for the prevention of accidents and the prevention of industrial diseases in employments or places of employment;

(*d*) to establish and maintain museums in which shall be exhibited safety devices, safeguards, and other means and methods for the protection of the life, health, and safety of workmen, and to publish and distribute bulletins on any phase of the subject of accident prevention;

(*e*) to cause lectures to be delivered, illustrated by stereopticon or other views, diagrams, or pictures, for the information of employers and their workmen and the general public in regard to first aid and in regard to the causes and prevention of industrial accidents, industrial diseases, and related subjects;

(*f*) to appoint advisory committees, on which employers and workmen shall be represented, to assist the Board in establishing reasonable standards of safety in employments, and to recommend rules and regulations;

(*g*) to charge any class, sub-class, or employer with the cost of any expenditure made under this Act for the benefit of that class, sub-class, or employer, including the cost of investigations, inspections, and other services rendered for the prevention of accidents.

(2) Before the adoption of any rule or regulation by the Board under this section a public hearing shall be held for the purpose of considering the same. Not less than ten days before the hearing a notice thereof shall be published in newspapers in the Province: the place of the publication of such newspapers shall be left to the discretion of the Board. No defect or inaccuracy in the notice or in the publication shall invalidate any rule or regulation made by the Board.

(3) The Board and any member of it, and any officer or person authorized by it for that purpose, shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it, and every part of them, for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe, adequate, and sufficient and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises, and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the Board

may deem necessary, including the purpose of determining the proportion in which the employer should contribute to the accident fund.

(4) Every person who obstructs or interferes with any commissioner, officer, or person in the exercise of the rights conferred by subsection 3 shall be guilty of an offence against this Part.

116c.—(1) Where in any employment or place of employment safety devices or appliances are in the opinion of the Board necessary for the prevention of accidents or of industrial diseases, the Board may order the installation or adoption of such devices and appliances, and may fix a reasonable time within which they shall be installed or adopted, and the Board shall give notice thereof to the employer. The employer shall notify the Board in writing as soon as any such order has been complied with.

(2) Where safety devices or appliances are by order of the Board under this section required to be installed or adopted, or are prescribed by the regulations, and the employer fails, neglects, or refuses to install and adopt such safety devices or appliances in any employment or place of employment in accordance with the terms of the order or regulations and to the satisfaction of the Board, or where under the circumstances the Board is of opinion that conditions of immediate danger exist in any employment or place of employment which would be likely to result in the loss of life or serious injury to the workmen employed therein, the Board may, in its discretion, order the employer to forthwith close down the whole or any part of the employment or place of employment and the industry carried on therein.

(3) Every employer who fails, neglects, or refuses to comply with any order made by the Board under subsection 2 shall be guilty of an offence against this Part, and each day's continuance of any such failure, neglect, or refusal to comply shall constitute a new and distinct offence.

116d.—(1) No employer shall, for the purpose of any industry within the scope of this Part, commence the operation of or operate or carry on any plant, or establishment, or any substantial addition thereto, which has not been in operation for the period of seven months last preceding, and in which power-driven machinery is used, until leave therefor is obtained from the Board as provided in this section.

(2) Application for leave under this section shall be made to the Board in writing, signed by the employer, and stating that the plant, or establishment, or any substantial addition thereto, is ready for operation. Upon receipt of the application, the Board or some member of the Board, or some other person appointed by the Board, shall make an inspection of the plant or establishment, or any substantial addition thereto, and if on such inspection the plant, or establishment, or any substantial addition thereto, is found to be reasonably free from danger to persons employed therein, the Board shall grant leave for the operation of the plant, or establishment, or any substantial addition thereto. Pending inspection, the Board may, by a temporary permit, grant leave to the employer for the operation of the plant, or establishment, or any substantial addition thereto.

(3) Every person who operates or carries on any plant, or establishment, or any substantial addition thereto, in contravention of the provisions of this section shall be liable to a penalty of not less than fifty dollars and not more than two hundred dollars for each day on which the plant, or establishment, or any substantial addition thereto, is so operated or carried on.

The foregoing sections, 116a, 116b, 116c and 116d, I have taken from the British Columbia Act.

In order to ensure the creation of accident prevention committees at plant level I recommend that the Board should pass a regulation under section 116b(1)(*c*) as follows:

The management of every operation in which twenty or more workmen are employed shall maintain an accident prevention committee consisting of not more than twelve members nor less than four members. Members of the committee shall be designated in equal numbers by the workmen and by the employers. Workmen representatives shall be regular employees in the operation, with at least one year's experience in that type of operation over which their inspection duties shall extend.

The general duties of the accident prevention committee shall be:

(*a*) To make a thorough inspection not less than once a month of the entire plant or place of employment for the purpose of determining hazardous conditions, to check on unsafe practices and to receive complaints and recommendations with respect to these matters.

(*b*) To investigate promptly all serious accidents and any unsafe conditions or practice which may be reported to it. Such investigations shall include accidents which might have caused serious injury to a workman whether or not such injury actually occurred.

(*c*) To hold regular meetings at least monthly for the discussion of current accidents, their causes, suggested means of preventing their recurrence and reports of investigations and inspections.

(*d*) To keep a record of all investigations, inspections, complaints, recommendations and minutes of meetings. The minutes to indicate what action has been taken with respect to suggestions or recommendations previously made, and if no action has been taken, the reason therefor to be given. Copies of minutes shall be sent promptly to the Workmen's Compensation Board and the accident prevention association, if any, representing the industries in the class to which the employer's industry belongs.

(*e*) To investigate fire conditions, examine fire-escapes, fire-extinguishers, water-buckets, sand-buckets, and all fire-fighting appliances.

(*f*) To inspect lighting arrangements in all places of employment, and to report to the employers all insufficiently lighted places, passage-ways, and other portions of the plant or camp where

workmen are liable to be injured in the course of their employment.

(*g*) To inspect or arrange for the inspection of all machinery, transmission motor stops, cables, blocks, slings, chains, tongs, tools, equipment and accident prevention devices.

(*h*) To provide at each establishment facilities for receiving written complaints and recommendations.

The committees in connection with logging camps shall, in addition to their other duties, inspect particularly all spar-trees, gin-poles, skid-roads, and general working conditions in and about the camps.

When the employer maintains an accident prevention department making regular plant and equipment inspections and investigations of accidents, the safety committee shall not duplicate such services but shall be furnished with copies of the records and reports in order that it may make recommendations regarding inspection and investigation facilities.

MERIT RATING

This subject relates only to the industries in Schedule 1.

Presently the Board fixes a uniform rate which is applicable to the industries in each class or in the groups into which a class may be divided. That rate depends upon the accident experience of the industries within the class or groups. No distinction is made between the employers in a class or group who have a favourable accident record and those who have not.

It was vigorously urged before me by some of those representing industry that the present method of assessment is unfair because the employer who has a favourable accident record is, in effect, punished by the bad accident record of other employers in the same class or group. To remove this alleged injustice those representatives recommended that some fair and equitable merit-rating system should be adopted. No specific plan of merit rating was brought forward by them.

Those representing other industries just as vigorously opposed all merit-rating systems and all those representing labour also opposed it.

The Act provides as follows:

> 98.—(2) It shall not be necessary that the assessment upon the employers in a class or sub-class shall be uniform, but they may be fixed or graded in relation to the hazard of each or of any of the industries included in the class or sub-class.
>
> (3) A system of merit rating may, if deemed proper, be adopted.
>
> 84.—(4) Where a greater number of accidents has happened in any industry than in the opinion of the Board ought to have happened if proper precautions had been taken for the prevention of accidents in it, or where in the opinion of the Board the ways, works, machinery or appliances in any industry are defective, inadequate or insufficient the Board may so long as such condition in its opinion continues to exist add to the amount of any contribution to the accident fund for which an employer is liable in respect of such industry such a percentage thereof as the Board may deem just and may assess and levy the same upon such employer, or the Board may exclude such industry from the class in which it is included, and if it is so excluded the employer shall be individually liable to pay the compensation to which any of his workmen or their dependants may thereafter become entitled and such industry shall be included in Schedule 2.
>
> (5) Any additional percentage levied and collected under subsection 4 shall be added to the accident fund or applied in reduction of the assessment upon the other employers in the class or sub-class to which the employer from whom it is collected belongs as the Board may determine.
>
> (6) Where in the opinion of the Board, the ways, works, machinery and appliances in any industry conform to modern standards in such manner as to reduce the hazard of accidents to a minimum and the Board is convinced that all proper precautions are being taken by the employer

for the prevention of accidents, and where the accident record of the employer has in fact been consistently good, the Board may reduce the amount of any contribution to the accident fund for which such employer is liable.

The Board advises me that over the years this subject has been contentious and vexatious. Employers have complained that assessments levied upon them have in some instances greatly exceeded the total accident cost in their industry in a year or a period of years. No employer, of course, has complained where the accident cost in his industry has exceeded his assessments. That was not to be expected.

No new arguments were advanced before me either by those proposing a merit-rating system or those opposing it. The Board advises me that they are the same as from time to time have been submitted to it. They are as follows:

Those in favour:

1. Employers with a low accident cost should benefit thereby and for that purpose be given a preferential rate.

2. Employers not employing or enforcing safety measures should be penalized by not getting a preferential rate.

3. It would be conducive to accident prevention because the assessment would bear a closer relation to individual accident cost.

Those opposing:

1. Any such system would destroy the collective liability system of the Act.

2. If assessments were to be fixed by reference to accident experience employers, with a view to reducing their assessments, would not report accidents.

3. It is unfair to take the accident cost as the only factor in determining rates. Many other factors enter into it.

4. It would unjustly penalize the employer whose accident cost was high through no fault or neglect on his part.

If this question were being raised before me for the first time I should have thought, perhaps rashly, that without destroying the collective liability feature of the Act, some system of merit rating could be devised that would be fair and equitable and workable. The Board, however, informs me that over the years various systems have been proposed and tested and that none of them have been satisfactory.

The Act as originally passed did not provide for any merit-rating system. What is now section 98 (3) was added to the Act in 1917. The experience of the Board over the years has been as follows:

From 1917 to 1920 inclusive a merit-rating system was applied *yearly*, that is to say, it applied in one year based on the accident experience of the previous year. This was unsatisfactory.

In October 1922, the Board concluded that one year's accident experience was an unfair basis, and it decided to apply it on the accident experience over a

three-year period. The plan provided for a refund for favourable accident experience and the imposition of an additional assessment for a bad one. That system was applied in October 1924 on the accident experience of the years 1921, 1922 and 1923.

That system was varied for the three-year period 1924, 1925 and 1926 by eliminating the penalty or demerit feature, and, instead of making refunds, making deductions from the assessments.

In each of the years 1929 to 1932 inclusive, a merit-rating system consisting of such deductions, and based on the accident experience in the first three of the immediately preceding four years, was applied.

In 1932, due to dissatisfaction expressed by employers, the merit-rating system was discontinued and in that year the Legislature amended the Act by deleting what was then section 93 (3). That deleted section, however, was restored to the Act in 1933 and is now section 96 (3).

In 1934, merit rating was again applied to two three-year periods, viz., 1929-30-31 and 1930-31-32, by deduction from the 1934 assessment.

In 1935, merit rating was applied to the years 1931, 1932 and 1933 by deduction from the 1935 assessment.

In 1936 merit rating was again discontinued. In each of the years 1937 and 1938 a preferential system was applied, but it was abandoned in May 1938, and since then no merit-rating system has been in effect.

Under the last such plan, that known as differential (preferred) rating, for the years 1936 and 1937 over 6,016 employers were penalized, it being estimated that the total penalties for those years amounted to approximately $1,466,437.53. In classes 1, 2, 3 and 4, by actual check, the penalties applied for the year 1936 amounted to $128,072.06 and for 1937 to $191,925.58. It was estimated that over 55 per cent of the firms penalized in the two years had a favourable *lifetime* experience with the Board, that is, the total assessment paid by each employer exceeded his total accident cost. However, other employers who were in the "red" over their lifetime experience with the Board escaped any penalty under this merit-rating plan on account of having a favourable accident experience in the years 1936 and 1937. The differential (preferred) rating plan was the cause of much irritation to the employers and loss of goodwill to the Board. It is estimated that complaints from one thousand employers or more were received, and also from different employers' associations. It was felt that the penalizing feature of the plan was a persuasive factor in inducing employers to avoid "poor risks", that is, to discriminate, between workmen, favouring those who, under certain circumstances, would have a lower accident cost in the event of an accident than others.

The discussions before me terminated on a tranquil note. Those in favour of a merit-rating system stated that presently they had experts studying the problem, and that they were hopeful that a system which would be fair and equitable and workable and not weaken the collective liability feature of the Act would be devised. The Board stated it would be willing to study any specific system that might be submitted to it, and, if convinced that it was all that those favouring it hoped it would be, to try it.

I leave the matter where those advocating the adoption of some such plan are content it should presently be left. The dangers involved in the adoption of a

system of merit rating are realized by those espousing it, as well as by those opposing it, and also by the Board. Those dangers are fittingly referred to by Mr. Justice Middleton in his report, thus:

> Great care would have to be taken in the application of any such merit-rating system because the whole principle of collective liability is based upon the doctrine of average. It is not enough that for a year, or even a short series of years, a particular factory escapes having any serious accident. The whole principle is that the fortunate must bear some portion of the burden of the unfortunate. This is illustrated in fire insurance. The rate is fixed having regard to experience, but no householder ever expects to receive fire insurance at a reduced premium simply because he has carried insurance for so many years and never had a fire.

Anything further that I might say with respect to those dangers would only be a repetition of what he so well said.

MEDICAL AID

Those portions of section 50 which have been made relevant by the submissions made to me are as follows:

> (1) Every workman entitled to compensation under this Part, or who would have been so entitled had he been disabled for seven days, shall be entitled to such medical, surgical and dental aid, the aid of drugless practitioners registered under *The Drugless Practitioners Act*, and hospital and skilled nursing services, and in the discretion of the Board where a workman is rendered helpless through permanent total disability, such other treatment, services or attendance as may be necessary as a result of the injury, and shall be entitled to such artificial member or members and apparatus and dental appliances and apparatus as may be necessary as a result of the injury, and to have the same kept in repair or replaced when deemed necessary by the Board.
>
> (2) In this Act "medical aid" shall mean the medical, surgical and dental aid, the aid of drugless practitioners registered under *The Drugless Practitioners Act*, and hospital and skilled nursing services, and where a workman is rendered helpless through permanent total disability, such other treatment, services or attendance and the artificial member or members and apparatus and repair above mentioned.
>
> (4) Medical aid shall be furnished or arranged for by the Board or as it may direct or approve and,—
>
> (*a*) in the industries in Schedule 1, shall be paid out of the accident fund and the necessary amount shall be included in the assessments levied upon the employers; and
>
> (*b*) in the industries in Schedule 2, the amount shall be paid by the employer of the injured workman to the Board for payment.
>
> (6) All questions as to the necessity, character and sufficiency of any medical aid furnished or to be furnished shall be determined by the Board.

Section 51 is as follows:

> 51. Every physician, surgeon and hospital official attending, consulted respecting, or having the care of any workman shall furnish to the Board from time to time, without additional charge, such reports as may be required by the Board in respect of such workman.

In addition to the foregoing statutory provisions a regulation of the Board passed under the authority of section 74, and bearing date November 13, 1941, is also relevant. It is as follows:

> In any case under Schedule 1 where the notice of accident shows that the workman is receiving treatment from a drugless practitioner and has not been examined immediately previous to such treatment by a physician or surgeon, the workman and the drugless practitioner should at once be written to by the claims department and advised that the Board requires

an examination by a duly qualified medical practitioner, who will complete a surgeon's report form supplied for that purpose. If for any reason the drugless practitioner does not wish to co-operate in this matter, by arranging for the examination, the claimant should then make his own arrangements. Form 92 (doctor's account) will not be at that time sent out by the claims department to the drugless practitioner, but the claim file will be marked to be returned to the medical aid department to note that the workman is being attended by a drugless practitioner, and that inquiry is being made.

An exception to the procedure in the foregoing paragraph will be in cases where it is indicated that the condition is a minor one of less than seven days' disability. In such cases, it will not be necessary to instruct the claimant to report to a physician or surgeon.

Subsequent to receipt of the medical report, the Board, or its medical officers, will decide whether or not treatment by a drugless practitioner is warranted. If such treatment is approved, the account of the drugless practitioner will be handled by the medical aid department as would any medical account.

The following submissions were made to me:

1. By The College of Physicians and Surgeons of Ontario and the Ontario Medical Association,—

   That the words "the aid of drugless practitioners registered under *The Drugless Practitioners Act*" wherever they appear in section 50 be deleted therefrom.

2. By the Associated Chiropractors and Drugless Therapists of Ontario Inc.,—

   That the regulation of the Board be amended by varying the second paragraph thereof so as to provide that the regulation shall not apply where the condition is a minor one of less than fourteen days of disability.

3. By the Board of Regents under *The Chiropody Act, 1944*,—

   That subsections 1 and 2 of section 50 be amended by inserting after the words "*The Drugless Practitioners Act*" the words "chiropodists registered under *The Chiropody Act, 1944*".

4. By the Christian Science Churches of Ontario,—

   (*a*) That persons who desire to effect a cure by prayer or spiritual means, should have the right to so notify their employer and the Board and with the permission of the employer those persons be allowed to have recourse to a cure of their physical ailments by means of resort to prayer or spiritual means.

   (*b*) That an adherent of the Christian Science Church who desires to have recourse to a Christian Science practitioner should not be required to submit to medical treatment in order to receive the financial benefits of the Act.

An injured workman is entitled immediately upon receiving an injury and thereafter subject to the regulation of the Board and other sections of the Act (sections 20, 21 and 22) to enlist the aid of the physician, surgeon, dentist or drugless practitioner of his choice. In my opinion that freedom of choice should continue to be given to him. The cost of that aid is paid in Schedule 1 cases out of the accident fund and in Schedule 2 cases by the employers through the Board.

In due course notice of the accident is received by the Board. If the injury is not compensable the Board does not interfere. If it is compensable the regulation of the Board comes into operation. That is the purpose of the reference in the second paragraph of the regulation to a disability of less than seven days' duration. If the injury is compensable the Board requires the workman to submit himself for examination to a duly qualified medical practitioner of his own choosing.

In my opinion that practice should be continued. The workman may think his injury to be one which can be effectively cured by the drugless practitioner and the latter may think he can cure it. They may both be right or they may be wrong. At that stage the Board is entitled to a report from a duly qualified medical practitioner and having received that report to decide whether the nature of the injury is such that continued treatment by the drugless practitioner is warranted.

The Board is not concerned with any jealousies or conflict in opinion or technique that may exist between physicians and drugless practitioners. The welfare of the injured workman is its main concern. That is why the power is given to the Board to determine the question of the necessity, character and sufficiency of any medical aid furnished or to be furnished to the workman.

No one will doubt that the workman is anxious about his own welfare. All will agree that he is entitled to the treatment that will best serve his needs. Any conflict between the members of the medical profession and the drugless practitioners as to what the nature of that treatment should be must be decided by the Board.

Until 1944 the chiropodists were registered under *The Drugless Practitioners Act*. Under *The Chiropody Act, 1944* they now maintain their own register. They are drugless practitioners in their own limited field even though they are registered under their own Act.

I therefore recommend that section 50 be amended by inserting after the words "*The Drugless Practitioners Act*" wherever they appear, the words "chiropodists registered under *The Chiropody Act, 1944*".

I further recommend that section 51 should be amended by adding to the persons thereby required to report to the Board drugless practitioners registered either under *The Drugless Practitioners Act* or *The Chiropody Act, 1944*.

An injured workman who is a member of the Christian Science Churches of Ontario may, according to his individual fervour, resort to prayer or spiritual means in seeking a cure of his physical ailment. There is nothing in the Act which prevents him, or, for that matter, the member of any other religious denomination, from so doing, whether the injury is compensable or non-compensable. There is nothing in the Act that interferes with the religious liberty of any member of that church. It is true that a member may lose his right to the benefits of the Act by refusing to submit himself to medical examination and treatment, but that does not constitute an infringement upon his religious liberties. It is something in addition to but not

in substitution for the means which he believes are more efficacious. He may still have resort to those other means but not at financial cost to the employer or the accident fund.

I draw your attention to the fact that if my recommendation for a reduction in the waiting period is adopted, the regulation of the Board which I have quoted will require an appropriate amendment.

For the purpose of providing medical aid to injured workmen in the convalescent stage the Board has established a convalescent hospital at Malton. It is known as the Malton Convalescent Centre. The patient population at any given time varies from 350 to 400 injured workmen in various stages of convalescence. At the head of the staff is a chief medical officer and under him a number of qualified medical doctors and hospital attendants. A large number of the patients come from places outside Toronto to be given the advantage of the special convalescent treatment which is there provided including various types of therapy. The patients, in over ninety per cent of the cases, are admitted to the centre at the request of their attending physicians and none without a previous consultation with the attending physician. While in the Centre the patients are under the care and supervision of the attending staff. Their own physicians, so I have been informed, are periodically advised of the patients' progress.

The Board takes a very great pride in this institution and on the information provided me during my inquiry, the Board is to be congratulated for having established it.

REHABILITATION

Section 52 provides as follows:

> 52. To aid in getting injured workmen back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measures and make such expenditures as it may deem necessary or expedient, and the expense thereof shall be borne, in Schedule 1 cases, out of the accident fund, and in Schedule 2 cases by the employer individually, and may be collected in the same manner as compensation or expenses of administration; provided that the total expenditure under the provisions of this section shall not exceed $100,000 in any calendar year.

Under the authority of that section the amounts spent by the Board in each of the years 1940 to 1948 inclusive and the industries to which the same were charged are as follows:

Year	Schedule 1 Industries	Schedule 2 Industries
1940	$12,406.02	$ 193.95
1941	8,304.58	292.75
1942	12,676.85	55.00
1943	8,556.02	233.65
1944	5,893.36	696.00
1945	4,365.97	967.29
1946	4,728.10	306.38
1947	5,202.47	.....
1948	2,458.90	.....
TOTAL	$64,592.27	$2,745.02

A break-down of those figures for 1940 was not available but for the years 1941 to 1948 it was as follows:

Business training	$16,540.93
Technical training	12,201.47
Employment training	12,607.07
General education	6,024.27
Miscellaneous	7,363.58
	$54,737.32

It developed early in the discussions on this subject that there was a widespread misunderstanding concerning the measures taken and expenditures made by the Board on rehabilitation. The misunderstanding was that a considerable measure of rehabilitation was provided by the Board at the Malton Convalescent Centre and therefore that included in the cost of operating that institution there must be, although not so shown in the Board's annual report, a substantial sum for rehabilitation. It was explained by the Board that the Malton Convalescent Centre is what its name implies, namely, an institution to which injured workmen are sent during the period of convalescence and the whole cost thereof is charged to medical aid. It is a fact that in some instances, depending upon the nature of the workman's injuries, the Board provides some occupational therapy at the Malton Convalescent Centre but, according to my understanding, in those instances the workman is

necessarily in the institution as a convalescent and it is expedient that while convalescing he be also given occupational therapy. The Board has not thought it necessary to segregate the cost of such occupational therapy from the other costs and if it did and charged it to rehabilitation, the total amount spent on rehabilitation in any year, to date, would be well within the annual amount authorized by section 52.

There is some distinction to be made between physical rehabilitation and employment rehabilitation and it is because the distinction has not always been observed in speaking of rehabilitation generally that the misunderstanding arose. Physical rehabilitation is the process of convalescence to the maximum recovery; employment rehabilitation is the process of lessening or removing residual physical handicaps resulting from injuries.

It is, of course, wholly desirable that assistance be provided to an injured workman in lessening or removing such physical handicaps and the measures provided by the Board received the unstinted endorsation of both employers and workmen represented before me.

The discussions before me covered an additional aspect of this subject, namely, the rehabilitation which is provided when an employer takes the injured workman back into his employ in a capacity in which his physical disability is not a handicap. That type of rehabilitation may, if circumstances in the employer's industry permit and if the injured workman is co-operative, be provided in all cases of partial disability, that is both temporary and permanent.

The extent of the workman's injuries may be such that he is temporarily totally disabled. While thus totally disabled he receives total disability compensation. Under proper medical or surgical treatment his condition gradually improves and there comes a time when, although he is not yet fit to resume his former employment, he is fit to do lighter work. From that time forward he is not entitled to compensation as a total disability case. Section 39 applies, and he is only entitled to be compensated on the basis of the difference between his average weekly earnings before the accident and the amount which he is then able to earn, having regard to his partial physical disability. The psychological effect on the injured workman who is enabled to get back into his former industrial surroundings, even at a lighter job and less pay but again associating with his fellow workmen, is unquestionably most beneficial. Physicians specializing in industrial medicine are unanimous in their opinion that when the workman gets back into his former surroundings where his thoughts are concentrated on his job rather than on himself, his morale is greatly improved and is conducive to a hastened recovery. That is rehabilitation in the broadest sense.

It was stated on behalf of industry that due to the limitations imposed by the seniority provisions of many collective agreements many employers find themselves hampered in providing suitable work for employees who have been injured and have recovered to an extent which enables them to perform certain work. It was accordingly suggested that the Act should be amended to provide that an employer may, for the purpose of the rehabilitation of an employee who has been injured in the course of his employment, place that employee in any job which may be suitable, having regard to the extent of recovery of the employee, notwithstanding the provisions of any collective agreement binding upon the employer and without affecting the seniority rights of the employee in question.

I am not prepared to adopt that suggestion. With deference to those who made the suggestion, in my opinion such a provision would be much too sweeping in its operations. It is possible that some modification of the suggested provision might, within the bounds of reasonableness, be embodied in a collective agreement between an employer and a union. I have not thought out what would be a reasonable provision because in my opinion that is a matter that might properly be left to the parties negotiating such an agreement rather than covered by any legislation.

COMPOSITION OF THE BOARD

The submissions made to me under this heading were several:

1. That the Board should be increased from three to five members.
2. That it should not be increased in size.
3. That a medical man should not be a member of the Board.
4. That one member of the Board should be a medical man.
5. That a member should be appointed to the Board from northern Ontario.
6. That, if the Board should be increased in size, the new appointees should be selected from the ranks of various named industries and professions.

Whatever may be the size of the Board I have certain pronounced and unshakeable views as to its composition and, by and large, those views were shared by most of the interests which were represented before me. By stating them at once I dispose of some of the submissions that were made to me.

I look upon the members of the Board as each occupying a position in very many respects comparable to the position occupied by a judge in the courts of the Province. Their decisions affect most intimately and vitally the lives of many of our citizens. To suggest that any member of the Board represents any group or interest is to infer that he is not unbiased and that the Board is a partisan Board. He may have been appointed from the ranks of industry or labour but once he is appointed he owes allegiance to no group. He must be beyond reproach and also beyond approach in the sinister sense. I entirely agree with what was stated in one brief that it would be a shocking state of affairs if an employer or employee or any one else should attempt to approach a member of the Board to discuss the case informally with a view to affecting the decision of the Board. Administrative ability, a keen and discerning mind and, above all, those moral qualities of integrity and absolute fairness and high purpose should be the qualifications for the office.

The matter of the remuneration paid to the Board must, of course, be a matter of government policy but I suggest that it should be sufficiently high to attract men possessing those qualities and such men are in demand in other places.

I am not in agreement with the submission that a member of the medical profession should not be a member of the Board. Indeed I think it is highly desirable that there should be such a man on the Board.

The Board as presently constituted, in my opinion, is as well balanced as it is possible to have it, a member formerly associated with industry, a member formerly associated with labour, and a member of the medical profession. The value of the contribution which each is able to give out of the wealth of his experience and training to the joint deliberations and decisions of the Board is reflected in the approval given by those who appeared before me to the manner in which the Board has discharged the onerous duties which rest upon it.

During the early part of my inquiry I had the impression that the work of the Board had reached such proportions that it should be increased in size. Further

investigation and consideration during the course of my inquiry have caused me to change my opinion in that regard. I now share the view expressed by the majority of those who appeared before me and who, prior to my undertaking this inquiry, had a better appreciation of the functioning of the Board than did I, that the Board should not presently be increased in size. This is not to say that the members of the Board are not busy men. Indeed they are busy and their duties are trying and onerous. They are most conscientious men and I have no doubt that if they felt that their duties were such as to make it advisable that the Board should be increased in size, they would communicate that fact to you.

I therefore recommend that there be no change in the Act affecting the composition of the Board.

INVESTMENTS

Section 105 of the Act is as follows:

> 105. In order to maintain the accident fund as provided by section 81 the Board may from time to time and as often as may be deemed necessary include in any sum to be assessed upon the employers and may collect from them such sums as may be deemed necessary for that purpose and the sums so collected shall form a reserve fund and shall be invested in securities issued by the Province of Ontario or in securities the payment of which is guaranteed by it or in securities issued by the Dominion of Canada or in securities the payment of which is guaranteed by it.

Under the Act as first passed the securities in which the Board was authorized to invest were limited to those types of securities in which a trustee might by law invest trust moneys.

In 1939 the Act was amended so as to authorize the Board to *also* invest in debentures issued under *The Tile Drainage Act* and purchased from the Treasurer of Ontario provided that the Board should not hold debentures in excess of $50,000 issued by any one municipality under that Act.

In 1942 the Act was further amended and as amended limited the securities to those issued by the Province of Ontario, or those the payment of which was guaranteed by the Province, *and* debentures under *The Tile Drainage Act* as authorized in 1939.

The present section is the result of an amendment in 1944.

A submission was made to me by the Investment Dealers Association of Canada that the section should be amended to authorize the Board to also invest in debentures issued by municipal corporations within Ontario.

Municipal debentures are included among the investments in which a trustee may by law invest trust funds.

While the Act permitted such investments the Board invested substantial sums in debentures issued by municipal corporations in Ontario. During the depression years certain of those municipalities defaulted payment of principal and interest. The duration of the default varied from one year to as much as seven or eight years.

Eventually the debenture indebtedness of each of those municipalities was reorganized under the direction and supervision of the Department of Municipal Affairs. In the result the Board did not lose any of its capital investment but its loss of interest amounted to approximately $480,000.

This unfortunate experience of the Board was drawn by me to the attention of the Investment Dealers Association and in reply it was submitted that a similar situation would not likely ever again develop due to the supervision presently exercised over municipalities by the Department of Municipal Affairs. The danger

of such a catastrophe again occurring is of course lessened by that supervision. Nevertheless I recommend against such an extension of the investment powers of the Board.

In my opinion the purpose of these accumulated funds is too sacred to justify their investment in any securities other than those presently authorized.

ANNUAL REPORTS OF THE BOARD

Section 76 of the Act is as follows:

> 76.—(1) The Board shall after the close of each year file with the Provincial Secretary an annual report upon the affairs of the Board.
>
> (2) The Provincial Secretary shall submit the report to the Lieutenant-Governor in Council and shall then lay the report before the Assembly, if it is in session, or if not, at the next ensuing session.

In several of the briefs submitted to me complaint was made that the annual reports of the Board in each of the years commencing with 1943 are too abbreviated. I agree with those submissions.

The reports for each of the years 1942 and immediately preceding years were considerably more extensive than for the years 1943 and following. I am given to understand by the Board that the change was due in large measure to the fact that originally the Act required the Board's annual report to be filed by January 15. The Board's fiscal year ends on December 31. That left only two weeks in which to prepare the report. The Act has since been amended and as amended does not limit the time within which the report must be filed.

In my respectful submission the Board's annual report should be sufficiently comprehensive to enable industry generally and the various classes and sub-classes in particular to ascertain by reference to it the total assessments made upon it and them, the compensation and pensions awarded to workmen in the various classes and sub-classes during the year, the outstanding liability of the Board in respect of compensation and/or pensions divided among the various classes and sub-classes and the funds in the possession of the Board to meet those liabilities. Without here detailing them I think the statistical information which was included in the annual report, for example, in 1942 should be included in each annual report.

I am informed by the Board that it is giving consideration to the complaints which were made before me and I think it may be assumed that henceforth the annual reports will be sufficiently extensive as to give industry—and indeed the public—a comprehensive and sufficiently detailed knowledge of the financial position of the Board and its operations during the year.

PROCEDURE WHEN AMENDMENTS TO THE ACT ARE CONTEMPLATED

This subject does not come within the scope of my inquiry. It must, of course, always be a matter to be determined by the Legislature. I, therefore, merely pass on to you the representations made to me. I quote from the brief of the Canadian Manufacturers Association as follows:

> On a number of occasions during recent years, important changes have been made in *The Workmen's Compensation Act*, without an opportunity being given to employers to consider them and make representations with respect to them. It is respectfully submitted that in view of the fact that the employers of the Province provide the whole of the money required for the payment of compensation and the administration of the Act, which, including investment income, now amounts to some $30,000,000, annually, in the case of Schedule 1 employers, it is not unreasonable to ask that they should be given an opportunity of studying and making representations with respect to any important proposed changes in the legislation. In other Canadian provinces it is the practice to have periodical reviews of the working of *The Workmen's Compensation Act*, usually every five years. In Ontario there has been only one review of the Act since 1914, namely, that conducted by the Honourable Mr. Justice Middleton in 1932. It is submitted that Ontario would do well to adopt the practice of having periodical reviews of the working of the Act by a judicial commissioner.

MISCELLANEOUS MATTERS

Under earlier headings in this report I have dealt with what might, perhaps, be termed the more prominent features of the Act.

In finally reviewing the oral and written submissions made to me I have discovered certain other matters that were referred to and which have not been dealt with by me under any of these headings. They are all matters of administration on which questions were submitted through me to the Board. I should think it would suffice to here state those questions and the Board's answers. They are as follows:

Q. Are current medical expenses for old injuries charged to the year in which the injury occurred or to the year in which the expense was incurred?

A. If medical expenses are incurred to-day for any accident, regardless of the year in which the accident occurred, they are charged as an accident cost during the current year.

. . . . . .

Q. On medical questions, what does the Board do in cases of doubt? Is the workman given the benefit of the doubt?

A. In those claims where the medical evidence is such as to throw doubt on the allowance of the claim, the workman is given the benefit of any reasonable doubt.

. . . . . .

Q. What procedure is followed by the Board where the employee is dissatisfied with the medical opinion received by the Board?

A. Where an injured workman is dissatisfied with the medical opinion filed with the Board, the Board will, without any question, refer the claimant to a specialist for opinion. The specialist to whom the matter is referred will be one trained in the particular field applicable to that claim.

Section 20 provides for examination of an injured workman when required by his employer and section 21 provides for referring the matter to a medical referee.

. . . . . .

Q. On questions of entitlement, apart from medical questions, for example whether the accident arose out of and in the course of the employment, what does the Board do in cases of doubt? Is the workman given the benefit of the doubt?

A. In those cases where there is doubt as to the allowance of a claim, the injured workman is given the benefit of reasonable doubt. The Board's policy is to give as broad an interpretation as possible to the terms of the Act.

. . . . . .

Q. What procedure is followed by the Board and a workman when the latter is dissatisfied with the Board's first award?

A. Most claims are handled in the first instance by the claims department. If a workman appeals from the first award the matter is dealt with by the Review Board, which Board is presently composed of three members of the staff—the Deputy to Commissioners, the Director of Medical Services, and the Secretary. If the injured workman is dissatisfied with the decision rendered by the Review Board, on his appeal the matter is dealt with by the Board. If the injured workman is still dissatisfied with the decision, his claim is reviewed by the Board.

Because there is no appeal to the courts from the Board's decisions the Board is only too willing to reconsider decisions made by the Board, especially in those cases where new evidence is supplied. Where it is deemed necessary, that is where the question is one of medical opinion, a medical referee may be appointed as provided by section 21 of the Act.

. . . . . .

Q. (*a*) How was the disaster reserve built up to its present figure?

(*b*) How is this reserve maintained?

(*c*) Is this reserve available for loss arising in any class in Schedule 1?

(*d*) Has the Board ever maintained a disaster reserve for any one class?

A. (*a*) By transfer of funds from assessments paid by employers on the following basis:

1 per cent of assessments in Schedule 1, each year, 1915-1922 inclusive,
1 per cent of assessments in Schedule 1, for year 1928.
2½ per cent of assessments in Schedule 1, each year, 1945-1946.

(*b*) As above, and interest added at 5 per cent per annum each year until 1946, inclusive. None thereafter.

(*c*) Yes.

(*d*) No.

. . . . . .

One other matter which was brought to my attention and was not covered by a questionnaire to the Board, concerns the procedure adopted by the Board in determining when a claimant is a dependant of a fatally injured workman. Under section 1 (1) (*e*) "dependants" are defined as meaning "such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent".

Whether or not a claimant comes within that definition will always be a question of fact. I should think that it would be impossible to apply any definite formula for determining that question. In particular that it would not be fair to conclude that the mere fact, without explanation, that the deceased had not contributed to the support of his wife and children over, say the last year of his life, definitely brought them outside the definition of "dependants". During the last year of his life the deceased might have been ill or out of employment. It is possible

to conceive of a case in which the deceased abandoned his wife and children to public charity. In such a case I would not be in any doubt that they were dependants within the definition, notwithstanding his failure to contribute to their support. I would not enlarge the definition but I suggest that in each case all the facts and circumstances should be considered and due regard given to all reasonable explanations for the failure of the claimants to receive support from the deceased during any given period of time.

It has occurred to me that it might be advantageous and serviceable to include in this report certain statistical information which shows the growth of the operations of the Board since the Act was first passed, and their present magnitude. That information is set out in Appendix "E" hereto.

I know that since I commenced my inquiry, the Legislature has enacted certain legislation touching upon some matters with which I have dealt in this report. I have not considered that legislation in making this report, because I concluded that I should take the Act as I found it at the date of my Commission.

This concludes my report. I confess that it has grown to a size beyond my anticipations when I commenced my inquiry. I can only hope that it may be found to be informative and otherwise serviceable. To all those persons who have assisted me, the Board, its staff, counsel, the reporters, the representatives of both industry and labour, I express my gratitude.

All of which is respectfully submitted.

Dated this 31st day of May, 1950

W. D. ROACH

APPENDIX "A"

CREST

SEAL

PROVINCE OF ONTARIO

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith.

TO

THE HONOURABLE WILFRID DANIEL ROACH, a Justice of Appeal of the Supreme Court of Ontario,

GREETING:

WHEREAS in and by Chapter 19 of the Revised Statutes of Ontario, 1937, entitled "*The Public Inquiries Act*", it is enacted that whenever Our Lieutenant-Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario, or the conduct of any part of the public business thereof, or of the administration of justice therein, and such inquiry is not regulated by any special law, he may, by Commission, appoint a person or persons to conduct such inquiry, and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the Commissioner or Commissioners deem requisite for the full investigation of the matters into which they are appointed to examine;

AND WHEREAS Our Lieutenant-Governor in Council of Our Province of Ontario deems it expedient to cause inquiry to be made concerning the matters hereinafter mentioned;

NOW KNOW YE that WE, having and reposing full trust and confidence in you the said WILFRID DANIEL ROACH, DO HEREBY APPOINT you to be Our Commissioner to inquire into and report upon and to make recommendations regarding *The Workmen's Compensation Act* upon subjects other than detail administration;

AND WE DO HEREBY CONFER on you Our said Commissioner the power to summon any person and require him to give evidence on oath and to produce such documents and things as you Our said Commissioner deem requisite for the full investigation of the matters into which you are appointed to examine;

TO HAVE, HOLD AND ENJOY the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant-Governor in Council for Our Province of Ontario.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS: THE HONOURABLE RAY LAWSON, Officer of Our Most Excellent Order of the British Empire, Doctor of Laws,

LIEUTENANT-GOVERNOR OF OUR PROVINCE OF ONTARIO

at Our City of Toronto in Our said Province this sixth day of October in the year of Our Lord one thousand nine hundred and forty-nine and in the thirteenth year of Our Reign.

G. A. WELSH
Provincial Secretary

BY COMMAND

APPENDIX "B"

PUBLIC NOTICE

THE WORKMEN'S COMPENSATION ACT

Notice is hereby given that, pursuant to *The Public Inquiries Act*, Revised Statutes of Ontario 1937, Chapter 19, the Government of the Province of Ontario has appointed the undersigned, the Honourable Wilfrid Daniel Roach, a Justice of Appeal of the Supreme Court of Ontario, a commissioner to inquire into and report upon and to make recommendations regarding *The Workmen's Compensation Act* upon subjects other than the detail administration of the Act.

All persons who desire to make any submissions within the scope of such inquiry are requested to do so in writing to be filed with me at my Chambers, Room 242, Osgoode Hall, Queen Street West, in the City of Toronto, on or before the 24th day of November next.

Thereafter a requisite number of public meetings will be held at the City of Toronto for the purpose of discussing and considering such written submissions. Due notice of the time and place of such meetings will be given to those who within the time above limited shall have filed any written submissions.

Dated at Toronto this 19th day of October, 1949.

W. D. Roach

The above notice was published in the following Ontario newspapers on the dates indicated:

The Globe and Mail, Toronto	October 22 and 25, 1949
The Kingston Whig Standard	October 22 and 25, 1949
The Ottawa Citizen	October 22 and 25, 1949
The Ottawa Journal	October 22 and 25, 1949
The Telegram, Toronto	October 22 and 25, 1949
The Toronto Daily Star	October 22 and 25, 1949
The Daily Press, Timmins	October 22 and 26, 1949
The Daily Times Journal, Fort William	October 22 and 26, 1949
The News Chronicle, Port Arthur	October 22 and 26, 1949
The Sudbury Daily Star	October 22 and 26, 1949
The Windsor Daily Star	October 22 and November 4, 1949

APPENDIX "C"

Briefs were submitted by the following:

Associated Chiropractors and Drugless Therapists of Ontario Inc.
Association of Mining Municipalities of Northern Ontario
Bell Telephone Company of Canada Limited
Board of Regents under The Chiropody Act
Board of Trade of the City of Toronto
Brampton Industrial Association
Canadian Construction Association
Canadian Institute of Stove Manufacturers
Canadian Manufacturers Association, Ontario Division
Canadian Manufacturers Association—Washing Machine Section
Canadian Retail Federation
Canned Foods Association of Ontario
Christian Science Churches of Ontario
College of Physicians and Surgeons
Construction Safety Association of Ontario
Dominion Marine Association
Electrical Employers Association of Ontario
Falls View Hose Brigade
Ford Motor Company of Canada Limited
International Nickel Company of Canada Limited
International Union of Mine, Mill & Smelter Workers, Local 241
International Union of Mine, Mill & Smelter Workers, Local 598
Investment Dealers Association of Canada
Labour-Progressive Party
Municipal Corporation of the City of Kitchener
Municipal Corporation of the City of Toronto
Municipal Corporation of the City of Windsor
Municipal Corporation of the Township of Sandwich East
Ontario Federation of Labour
Ontario Firemen's Association
Ontario Forest Industries Association
Ontario General Contractors Association
Ontario Hospital Association
Ontario Medical Association
Ontario Mining Association
Ontario Municipal Association
Ontario Naturopathic Association
Ontario Pulp and Paper Makers Safety Association
Ontario Road Builders Association
The Railway Transportation Brotherhood
The Railways
Shoe Manufacturers Association of Canada
Standard Chemical Company Limited
Tanners Association of Canada

Toronto Builders Exchange
Trades and Labor Congress
Wellandvale Manufacturing Company Limited
West Flamborough Voluntary Fire Department

APPENDIX "D"

MEMORANDUM OF AGREEMENT made and entered into this day of

BETWEEN:

THE WORKMEN'S COMPENSATION BOARD
OF THE PROVINCE OF ONTARIO,

Hereinafter called the Party of the FIRST PART,

– and –

THE WORKMEN'S COMPENSATION BOARD
OF THE PROVINCE OF

Hereinafter called the Party of the SECOND PART.

WHEREAS under the provisions of The Workmen's Compensation Act of Ontario and The Workmen's Compensation Act of the Parties hereto may make arrangements with respect to compensation for injuries to workmen whose occupation is of such a nature as to require the performance of their duties partly in Ontario and partly in and thereby avoid duplication of assessments on the earnings of workmen protected at the same time under the said Acts.

AND WHEREAS it is understood between the Parties hereto that this agreement shall extend only to such disabilities and to such industries, workmen and dependants as are covered and to the benefits which are provided under the Workmen's Compensation Acts both in the Province of Ontario and in the Province of .

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

The Party of the First Part covenants and agrees with the Party of the Second Part that when a workman whose residence and usual place of employment is in and whose occupation is of such a nature as to require the performance of his duties partly in and partly in Ontario and who is employed in an industry or portion of an industry covered under both Acts above referred to is injured in Ontario and compensation is actually paid or awarded to be paid to such workman or to his dependants by the Party of the Second Part, the Party of the First Part shall reimburse the Party of the Second Part for the compensation paid or awarded to such workman, but at and according to a rate or amount of compensation not to exceed that provided and authorized by the Ontario Workmen's Compensation Act.

The Party of the Second Part covenants and agrees with the Party of the First Part that when a workman whose residence and usual place of employment is in Ontario and whose occupation is of such a nature as to require the performance of his duties partly in Ontario and partly in and who is employed in an industry or portion of an industry covered under both Acts above referred to is injured in and compensation is actually paid or awarded to be paid to such workman or to his dependants by the Party of the First Part, the Party of the Second Part shall reimburse the Party of the First Part for the

compensation paid or awarded to such workman, but at and according to a rate or amount of compensation not to exceed that provided and authorized by the Workmen's Compensation Act.

IT IS FURTHER UNDERSTOOD AND AGREED between the Parties hereto that in order to avoid duplication of assessments, employers who come within the scope of the Workmen's Compensation Acts of both Ontario and and whose workmen are employed in occupations of such a nature as to require its performance partly in Ontario and partly in shall be assessed by the Party of the Second Part for only such wages or salaries as are earned by such workmen in the Province of and by the Party of the First Part for only such wages or salaries as are earned by such workmen in the Province of Ontario.

IT IS FURTHER UNDERSTOOD AND AGREED that each of the Parties hereto will render to the other Party all necessary and reasonable assistance in carrying out the provisions of this agreement and in ascertaining the true pay-roll which each Party is entitled to assess against the employers of such workmen as are herein described with respect to such workmen.

This Agreement shall become effective with respect to assessments earned on and after and to accidents occurring and industrial diseases becoming disabling on or after that date and may be terminated or cancelled by mutual consent at any time without notice, or at the end of any calendar year by notice by either party by registered mail sent at least one month before the end of the calendar year.

IN WITNESS WHEREOF the party of the First Part and the Party of the Second Part have hereunto affixed their corporate seals.

SEALED AND DELIVERED AND COUNTERSIGNED respectively by the Chairman of the Party of the First Part and the Chairman of the Party of the Second Part on the date first above written.

THE WORKMEN'S COMPENSATION BOARD
OF THE PROVINCE OF ONTARIO

By .....
Chairman

THE WORKMEN'S COMPENSATION BOARD
OF THE PROVINCE OF

By .....
Chairman

APPENDIX "E"

Table 1

This table shows assessments collected from industries in Schedule 1 in each of the years shown below and awards made during these years for accidents in these industries regardless of the year in which the accident occurred. It does not include awards made for silicosis and in 1948 includes the capitalized cost of increased pensions to widows and dependants approximating $3,350,000 which resulted from the amendment to the Act in 1948.

Year	Assessments Collected During the Year	Compensation Awarded During the Year	Medical Aid Awarded During the Year
	$	$	$
1915	1,551,543.91	691,487.62	.....
1925	4,843,021.03	3,635,530.27	875,836.01
1935	5,566,043.08	3,086,710.44	1,020,653.11
1940	6,186,310.07	4,624,272.85	1,388,525.31
1945	13,007,224.67	8,274,092.34	1,854,435.78
1946	14,373,958.73	10,779,535.71	2,328,934.94
1947	18,336,296.26	11,671,025.68	2,704,355.73
1948	23,126,865.41	14,611,430.34	4,062,234.24
1949	24,391,983.74	11,040,092.42	4,685,577.40

Table 2

This table shows the estimated pay-roll returned by the industries in Schedule 1 at the beginning of each of the years shown below and the number of employers in those industries as of January 1 in each of those years.

Year	Estimated Pay-roll	Number of Employers
	$	
1915	.....	14,750†
1925	395,619,000.00	25,155
1935	373,112,000.00	19,942
1940	628,161,000.00	24,973
1945	1,167,802,000.00	25,001
1946	1,295,441,000.00	29,039
1947	1,344,234,000.00	35,296
1948	1,719,531,000.00	39,452
1949	1,913,180,000.00	40,975
1950	.....	44,549

†End of year figure.

Table 3

Accident Statistics

Year	Accidents Reported During Year*	Accidents Involving Payment†				
		Medical aid only	Temporary disability	Permanent disability	Death	Total
1915	17,033	.....	7,204	940	184	8,328
1925	60,012	22,415	21,847	1,891	193	46,346
1935	58,546	26,841	18,205	844	163	46,053
1940	81,116	42,903	23,291	1,292	186	67,672
1945	118,220	58,575	32,637	2,087	257	93,556
1946	138,570	72,567	37,456	2,235	195	112,453
1947	168,767	70,461	33,473	878	106	104,918
1948	179,811	99,103	42,247	1,938	179	143,467
1949	179,894	(a)	(a)	(a)	(a)	(a)

*Accidents reported refer to total accidents in the industries included in both schedules 1 and 2. No break-down is available.

†Accidents involving payment refer to those in the industries in Schedule 1 only. These figures refer to the accidents for the year in question, to the end of 1946. Because of a change in the Board's internal accounting system, figures for 1947 refer to 1947 accidents only, and for subsequent years to accidents *finalled* during the year.

(a) Figures not yet available.

Table 4

This table shows the accident cost for accidents which occurred during each of the years shown below. It embodies "for the year" experience and does not include the additional costs for pensions to widows and other dependants which resulted from the amendment to the Act in 1948.

Year	Type of Payment	Type of Claim			
		Medical aid only	Temporary disability	Permanent disability	Death
		$	$	$	$
1925	Compensation	.....	1,223,789.72	1,884,021.43	786,523.59
	Medical Aid	106,809.19	497,977.52	230,216.30	16,976.85
1935	Compensation	.....	1,369,569.13	1,374,329.64	609,649.21
	Medical Aid	159,128.24	694,892.93	163,262.77	15,645.39
1940	Compensation	.....	2,055,899.21	2,385,288.92	794,082.07
	Medical Aid	252,669.53	893,081.42	295,534.64	14,469.78
1946	Compensation	.....	4,593,186.12	5,175,154.72	1,327,831.88
	Medical Aid	395,302.46	1,571,027.35	482,442.84	16,942.20
1948	Compensation	.....	4,356,942.56	4,560,815.10	1,559,978.16
	Medical Aid	655,491.86	3,054,629.69	299,637.74	16,370.15